

VOLUME III
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
PENNY T. COLLINS,

Plaintiff,

vs.

5:07-CV-493

THE STATE OF NEW YORK, NEW YORK
STATE DEPARTMENT OF CORRECTIONAL SERVICES,
GLENN S. GOORD, JOHN BURGE, HAROLD GRAHAM,
and TROY MITCHELL,

Defendants.

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Transcript of a Jury Trial held on March 14,
2012, at the James Hanley Federal Building,
100 South Clinton Street, Syracuse, New York, the
HONORABLE GLENN T. SUDDABY, United States District
Judge, Presiding.

A P P E A R A N C E S

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BY: CATHY Y. SHEEHAN, AAG
ROGER KINSEY, AAG

I N D E X O F T E S T I M O N Y

<u>Witness</u>	<u>D</u>	<u>C</u>	<u>RD</u>	<u>RC</u>	<u>FRD</u>	<u>FRC</u>
Penny Collins	--	497	527	539	--	--
John Hoefling	542	569	607	611	--	--
Susan Carter Deposition	636	--	--	--	--	--
Kenneth Reagles	667	--	--	--	--	--

1 (Open Court, Jury Out, 9:06 a.m.)

2 THE COURT: Okay, good morning. We're outside
3 the presence of the jury, Counsel, are we ready to proceed
4 this morning?

5 MR. KINSEY: I have some matters to discuss
6 with the court if I may. Before I do I would request that
7 all third parties are removed from the courtroom, since this
8 is a matter that the court found to be most delicate.

9 THE COURT: Okay. Bruce, can I ask you to
10 clear the back of the courtroom for a minute.

11 (Courtroom closed.)

12 MR. KINSEY: Thank you, your Honor. At the
13 close yesterday, or just before the close, we had a
14 discussion about entering into evidence concerning the rape
15 that was down near Sing Sing at the beginning of this time
16 frame, and overnight, I reviewed Dr. First who's going to be
17 our expert, his notes, and his followup notes after we
18 received the deposition, brief deposition of plaintiff. His
19 testimony is going to include testimony about what PTSD is,
20 and those stressors that alert a clinician to PTSD.

21 Now, the linkage is going to come as plaintiff
22 testified that she's afraid of the dark, afraid of men,
23 afraid to be alone, afraid of all of that, and that's
24 directly linked to the symptomology following a rape and
25 following PTSD as a result of that. So we're back, and if

1 the court, we're a ways from the doctor and we have no desire
2 to victimize plaintiff by asking her this on
3 cross-examination, but we're sort of at a place where we
4 can't show causation and we can't address damages because we
5 can't talk about the symptomology in light of the event. And
6 the jury is going to be left in a position of thinking that
7 taped glasses and bathroom talk led to that symptomology, and
8 led to such a fear and hatred specifically of Lieutenant
9 Mitchell that it just caused a complete meltdown and
10 homicidal thoughts.

11 So we have no desire to victimize the
12 plaintiff but at the same time, as counsel said, the rape has
13 nothing to do with the claims, but it's the giant gorilla in
14 the room which really causes the PTSD for which DOCS is being
15 blamed. And without talking about it, we're unable to
16 discuss how much of that first cause and how much
17 subsequently was responsible for her condition, and for her
18 ongoing claims that she's damaged.

19 THE COURT: Ms. Connor.

20 MS. CONNOR: Excuse me, thank you, your Honor.
21 I thought we talked about this yesterday. I think this is a
22 rehashing of what we had at the side bar, I don't really hear
23 anything different from counsel. Overnight, your Honor, you
24 asked me to ask whether my client was going to deny that it
25 happened and the answer is no, she's not going to deny it.

1 And that you were ruling that counsel could talk, could
2 examine medical providers including her doctor and Dr. First
3 concerning this. So I don't understand what is any different
4 about what counsel says this morning as to what we talked
5 about yesterday.

6 THE COURT: Well, I understand what he's
7 saying. I reviewed the deposition last night, which I hadn't
8 seen before, and have given it some additional thought, and
9 the problem is, Ms. Connor, is that you have an issue where
10 you, your client is claiming all sorts of damage as a result
11 of symptomology that she is claiming as a result of sexual
12 harassment at corrections by the defendants, all right, when
13 there is another causation possible here. And I don't
14 disagree with counsel when you look at what she describes,
15 fear of men, fear of strangers, fear of being alone, not
16 wanting to be in the dark, are classic symptoms of a victim
17 of a sexual attack. So those things are now being attributed
18 to the actions of these defendants when it may not be the
19 causation or it may be only part of the causation. That's
20 for the fact finders to determine. So then I'm left with a
21 situation, how do we deal with this. To just, you know, I
22 thought quite a bit about this overnight, to just allow them
23 to ask the doctors leaves the jury in a vacuum as to where is
24 this coming from, what are they talking about, some incident
25 that occurred in January of -- what was the year?

1 MS. CONNOR: 2003.

2 THE COURT: 2003. January 1st, 2003. And it
3 doesn't give them the full picture. Now I'm very sensitive
4 to your client, plaintiff in this case. You made the
5 argument of 412. 412 applies in civil cases but this is not
6 a classic 412 situation, Rule 412, because it's not asking
7 her about her sexual habits or behavior, to try and suggest
8 that she somehow welcomed this behavior from the defendants
9 in corrections. This is an attack, this is an assault,
10 unwelcomed, has nothing to do with her sexual behavior. She,
11 you know, this isn't something she sought out, she's a
12 victim, and the question is how do we deal with that?

13 Now, I think that defense has a right to at
14 least ask was she assaulted, was she assaulted in January
15 that had nothing to do with her employment or any of these
16 defendants, and certainly, you know, there's a link there to
17 say, could that be the cause of some of these symptoms that
18 you are suffering. I'm open to hear your argument, but I
19 think I have to at least let them do that, to be fair. I
20 don't see any way around it.

21 MS. CONNOR: Well, we would stipulate to the
22 fact that she was sexually assaulted, January 1st, 2003.
23 We'd stipulate to that.

24 THE COURT: Without having to ask her.

25 MS. CONNOR: That's correct.

1 THE COURT: Okay.

2 MS. CONNOR: And I thought that was part of
3 what we -- that's what part of the purpose of the side bar
4 was yesterday.

5 THE COURT: Okay. Well, I'm just trying to
6 get this clear. See, it has to get before the jury some way,
7 it has to, because it can be an explanation for her symptoms.

8 MS. CONNOR: Well, asking her, she's not a
9 medical person, she's regular, she's not a trained medical
10 person. So I thought that what -- the framework that we
11 discussed yesterday was the more appropriate framework, that,
12 and that's why you asked me to discuss this with my client to
13 see whether she would deny it. She would not deny it, we
14 will stipulate to it. After that, I thought that the
15 questions would be properly presented to either the medical
16 provider, medical, you know, the psychiatric expert which --
17 and go from there. And I thought that was the framework with
18 which we were going to approach it.

19 THE COURT: That's fair. So Ms. Connor,
20 you're going to stipulate on the record that your client was
21 sexually assaulted on January 1st, 2003?

22 MS. CONNOR: Yes.

23 THE COURT: And then the questions can go to
24 the medical doctors and there's a framework for that, those
25 questions.

1 MR. KINSEY: Can we use that terminology with
2 the doctors?

3 MS. CONNOR: Sexually assaulted?

4 THE COURT: Absolutely.

5 MR. KINSEY: Now the second leg of that, your
6 Honor, with the stipulation, we would also like it stipulated
7 that none of our defendants were involved in any way.

8 THE COURT: Had anything to do with it.

9 MS. CONNOR: Your Honor, it's not part of the
10 complaint. We stipulate to that. There's no allegation
11 whatsoever that any of these defendants have liability or
12 connection to that matter.

13 THE COURT: I understand, but they want that
14 to be clear and I understand where he's coming from.

15 MS. CONNOR: That's fine.

16 THE COURT: It has to be clear there was a
17 sexual assault that has nothing to do with any of these
18 defendants. Separate and apart from any claim in this case,
19 that should be part of the stipulation so it's clear for the
20 jury and then the medical doctors can be questioned
21 appropriately as to the plaintiff's symptoms and her issues
22 after that time frame, but it certainly can be a part of
23 what's going on.

24 MS. CONNOR: Understood, and I thought that
25 was the framework that we had discussed and more or less

1 moved toward yesterday with just confirming it this morning.

2 THE COURT: I think that's an appropriate way
3 to handle it. Counsel, is that acceptable to you and your
4 clients?

5 MR. KINSEY: Absolutely. We have no desire to
6 victimize the plaintiff, but this whole idea of causation and
7 the involvement and the root cause of the PTSD is essential.

8 THE COURT: I understand.

9 MR. KINSEY: Thank you.

10 THE COURT: I understand completely.
11 Mr. Andrews, is that acceptable to you and your client as
12 well?

13 MR. ANDREWS: Absolutely, your Honor.

14 THE COURT: So the stipulation will be that
15 the plaintiff was sexually assaulted on January 1st, 2003,
16 and none of these defendants, Department of Corrections or
17 Mr. Mitchell, any of the named defendants had anything to do
18 with it, separate and apart from her employment with New York
19 State Department of Corrections, okay.

20 MS. CONNOR: Your Honor, may I have one moment
21 to confer with my client about one follow-up matter to that.

22 THE COURT: You may.

23 MS. CONNOR: Thank you.

24 (Pause in Proceedings.)

25 MS. CONNOR: Your Honor, may I have a moment,

1 please, I'd like to confer with my client in the attorney
2 conference room.

3 THE COURT: Go ahead.

4 (Whereupon a recess was taken from 9:17 a.m.
5 to 9:20 a.m.)

6 (Open Court, Jury Out.)

7 THE COURT: Okay.

8 MS. CONNOR: Thank you very much, your Honor.

9 THE COURT: Not a problem.

10 MS. CONNOR: Your Honor, I have an additional
11 request.

12 THE COURT: Okay.

13 MS. CONNOR: And that is when the stipulation
14 is made on the record in front of the jury, if we can ask the
15 courtroom to be cleared and not have extraneous persons, you
16 know, like now, without any third parties in the courtroom, I
17 would ask the court for that, please.

18 THE COURT: Okay.

19 MR. KINSEY: No objection.

20 THE COURT: Any objection to that?

21 MS. SHEEHAN: No, your Honor.

22 MR. ANDREWS: No.

23 MS. SHEEHAN: We do have counsel from one of
24 the defendants here, he reports back each night to -- DOCS
25 general counsel.

1 THE COURT: Okay. If he's an attorney as part
2 of the suit, that's fine.

3 MS. SHEEHAN: Thank you, your Honor.

4 MS. CONNOR: Additionally, your Honor, second,
5 ancillary to that, would be when the doctors are questioned
6 about this, can we likewise have the same courtesies,
7 request?

8 THE COURT: I'm very reluctant to keep closing
9 the courtroom. I think you are all aware of my
10 responsibilities in that regard for keeping the courtroom
11 open. We'll have to make a record, you know, maybe we'll
12 just close it for that limited part.

13 MS. CONNOR: That's -- I'm not asking for the
14 entire testimony.

15 THE COURT: It's, you know, I start treading
16 on very thin ice when I, you know, start considering closing
17 courtrooms, and we'll have to make a good record, and you
18 know, we'll consider it at that time, but then you get into
19 the issue of closing arguments and on and on and on, so I
20 can't --

21 MS. CONNOR: I understand.

22 THE COURT: -- close the courtroom in all
23 those situations, so I'll just warn you to that. I'll
24 certainly listen to you and I'll consider it, and I
25 understand the sensitivities, but it's -- it's something

1 that's a difficult decision to make, okay. Anything else
2 before we bring the jury in?

3 MR. ANDREWS: No, your Honor.

4 MR. KINSEY: Nothing, your Honor, thank you.

5 THE COURT: Okay. Ms. Connor, Ms. Collins, if
6 you're ready to retake the stand. Are you okay, in a
7 situation where you're going to be composed enough to get
8 through this?

9 THE WITNESS: Yes.

10 MR. ANDREWS: Should I come forward, your
11 Honor?

12 THE COURT: Yes, come on up. The courtroom
13 should be open at this point.

14 MR. KINSEY: Your Honor, as the jury's coming
15 in and the courtroom being reopened, I believe there are
16 potential witnesses that have been subpoenaed by plaintiff,
17 we would like them excluded from the courtroom during
18 testimony.

19 THE COURT: That are in the courtroom?

20 MR. KINSEY: They were in the courtroom this
21 morning.

22 THE COURT: Ms. Connor, if you have any
23 witnesses here, just ask them to wait outside, okay.

24 MS. CONNOR: I believe there are two, your
25 Honor.

1 THE COURT: Can you ask them to wait outside.

2 MS. CONNOR: Would you like me to do it now?

3 THE COURT: Yes, please, until they're called,
4 they shouldn't be in the courtroom during other testimony.

5 MS. SHEEHAN: Your Honor, at lunchtime, can we
6 get a lineup of the witnesses to follow? We have a couple
7 people traveling, making arrangements.

8 THE COURT: We'll try and get a barometer of
9 where we are here.

10 MS. SHEEHAN: Getting phone calls.

11 THE COURT: Understand. Hopefully the pace is
12 going to pick up. Bring the jury in, please.

13 (Jury Present, 9:24 a.m.)

14 THE COURT: Okay. Good morning, ladies and
15 gentlemen, hope you had a good night. Sorry for the late
16 start, hopefully we had some food that was more to your
17 liking in there this morning. I don't know if that's
18 accurate or not, but I hope so.

19 THE CLERK: Not yet.

20 THE COURT: Not yet, huh? Well, as you may
21 remember, Ms. Collins was still on the stand, Mr. Andrews is
22 on cross-examination, going to pick up where we left off. Go
23 ahead, sir.

24 MR. ANDREWS: Thank you, your Honor.

25

1 P E N N Y C O L L I N S , recalled as a
2 witness and being previously duly sworn, testifies
3 as follows:

4 CONTINUED CROSS-EXAMINATION BY MR. ANDREWS:

5 Q Good morning. Ms. Collins, I think yesterday
6 we managed to establish a timeline relative to your testimony
7 from yesterday about Troy Mitchell and I'd like to follow up
8 on that a little bit, okay?

9 A Yes.

10 Q Okay. You testified yesterday that
11 Mr. Mitchell told you that women did not belong at Auburn;
12 you recall that testimony?

13 A Yes.

14 Q And you said several people witnessed it?

15 A Yes.

16 Q And you named an individual Officer Howell, do
17 you recall that?

18 A Yes.

19 Q Do you recall that in your deposition, you
20 were asked about this alleged statement by Sergeant Mitchell,
21 and you were asked who the witnesses were?

22 A Yes.

23 Q And do you recall that the only one you could
24 identify was an Officer Neuser, Neuser?

25 A Yes.

1 Q And that officer died some years ago, is that
2 correct, if you're aware?

3 A No.

4 Q Okay. Do you believe he didn't die or you
5 don't know?

6 A I don't know.

7 Q Okay. Now, other than Officer Neuser, you
8 were asked who else was there, and you said you didn't know
9 any of the other officers' names; do you recall that
10 testimony?

11 A Yes, I do.

12 Q So did you learn Officer Howell's name at some
13 later point in time?

14 A No, I was orientating with Officer Howell.

15 Q But do you recall being asked who witnessed
16 that statement, that alleged statement by Sergeant Mitchell?

17 A Yes.

18 Q And at that time you didn't identify Officer
19 Howell, correct?

20 A If it's not in my deposition that I did, then
21 I didn't.

22 Q So you're not sure?

23 A I'm sure that Officer Howell was there.

24 Q Well, we can continue. You gave testimony
25 about an occasion when an inmate flashed you, do you recall

1 that?

2 A Yes.

3 Q Okay. And you say this occurred in the fall
4 of 2004?

5 A I'm not sure of the date, but that happened.

6 Q You said it was several months after you
7 started at Auburn?

8 A Yes.

9 Q And you said that day or the next day Sergeant
10 Mitchell made comments about that incident?

11 A Yes.

12 Q You didn't give any response when Sergeant
13 Mitchell made that -- made those two statements, correct?

14 A No.

15 Q None at all?

16 A No.

17 Q I'd like to talk to you about the wallet
18 incident.

19 THE COURT: Ms. Connor, do you need a break?

20 THE WITNESS: Yes, sir, I do.

21 THE COURT: Okay. Ladies and gentlemen of the
22 jury, I apologize, we're going to just take a short break,
23 I'm going to ask you to step out for a minute, please don't
24 talk about it, discuss it.

25 (Jury Excused, 9:28 a.m.)

1 THE COURT: Go ahead, step down.

2 THE WITNESS: I'm sorry.

3 THE COURT: Go ahead.

4 (Whereupon a recess was taken from 9:29 a.m.
5 to 9:35 a.m.)

6 (Open Court, Jury Out.)

7 THE COURT: Ms. Connor, Mr. Andrews requested
8 to put something on the record before the jury comes back so
9 if you're prepared to deal with that right now?

10 MS. CONNOR: Put something on the record about
11 what, your Honor?

12 THE COURT: I don't know. He's just asked for
13 an opportunity to be heard.

14 MS. CONNOR: I'm sorry, I thought you were
15 referring to something I'm supposed to know what it is, okay.

16 THE COURT: No, I'm just --

17 MS. CONNOR: Yes.

18 THE COURT: Mr. Andrews, go ahead, sir.

19 MR. ANDREWS: Your Honor, I'm very concerned
20 that what just happened is going to give the appearance that
21 my questions about my client caused the witness to cry, when
22 in fact I think it's events leading up to it, and I would ask
23 for a curative instruction just to note to the jury that she,
24 you know, that there was an upsetting topic before she
25 started testifying, that, you know, didn't have anything to

1 do with the questioning that I was doing.

2 THE COURT: Ms. Connor.

3 MS. CONNOR: Your Honor, I would be opposed to
4 that. The witness has cried before on the stand, we've taken
5 another break, and a curative instruction just with respect
6 to this, I think would, an upsetting topic, that adds to the
7 topic, it adds a certain judgment, value judgment to the
8 topic and I don't think that's appropriate.

9 THE COURT: Well, part of the problem is, the
10 appearance to this jury is that the questions that
11 Mr. Andrews has had about defendant Mitchell, you know, their
12 impression is, I would imagine, that has caused her, your
13 client to be so upset, and I think anybody who's been in this
14 courtroom this morning knows that that's not the case, it's a
15 different topic that has caused her to be upset and not able
16 to compose herself, so it's either I give curative
17 instructions or I can have Mr. Andrews ask questions, are my
18 questions upsetting you or is there something else, however
19 you want to deal with it, but I think it's only right and
20 fair to let it get corrected for this jury so they understand
21 that it's not his questioning, I don't believe, unless you
22 want your client to answer that.

23 MS. CONNOR: I would prefer it from your
24 Honor. And I would -- he said upsetting topic, a more
25 neutral description of the topic would be better, your Honor.

1 THE COURT: Okay. Okay. Well, what I would
2 propose to say to this jury is that we had to deal with some
3 issues before they came in, and the subject matter was
4 upsetting to the plaintiff and that's what she's been upset
5 about and having difficulty composing herself, not the
6 cross-examination of Mr. Andrews or the content of his
7 questions. So it's clear to them, and that's why we took
8 another break and let her compose herself so we can get
9 started again, okay.

10 MS. CONNOR: Okay, your Honor.

11 THE COURT: Okay. Do you have a suggestion of
12 other wording that you would like?

13 MS. CONNOR: I would just take the word
14 upsetting and substitute different. Different topic.

15 THE COURT: What word would you use?

16 MS. CONNOR: A different topic that upset the
17 plaintiff.

18 THE COURT: Okay. I'll do it that way.

19 MS. CONNOR: Try to neutralize it a little.

20 THE COURT: Something -- they need to know
21 that something else upset her and not the examination of
22 Mr. Andrews.

23 MS. CONNOR: I understand that point, your
24 Honor.

25 THE COURT: Okay.

1 MS. CONNOR: Your Honor, before we bring the
2 jury back in, I have another problem that I'd like to draw to
3 the court's attention. I subpoenaed a witness for this
4 morning who's not here, not complied with my subpoena. I'd
5 like to draw that to the court's attention and I need -- I'm
6 going to need some assistance to enforce the subpoena.

7 THE COURT: Okay. And who is that witness?

8 MS. CONNOR: It's Mary Mayville, and I have an
9 affidavit of service, personal affidavit of service with me,
10 personal service on Ms. Mayville.

11 THE COURT: Have you had any contact with
12 Ms. Mayville?

13 MS. CONNOR: No, your Honor, I have tried
14 repeatedly. I have mailed her letters, I have phone calls,
15 and I -- she is not responsive.

16 THE COURT: Is she still an employee of DOCS,
17 do we know that?

18 MS. CONNOR: No, your Honor, she's a retiree,
19 she's retired from DOCS.

20 THE COURT: She's retired?

21 MS. CONNOR: Yes.

22 THE COURT: And do we know where she's living?

23 MS. CONNOR: Yes, your Honor, my process
24 server personally served her residence.

25 THE COURT: She was personally served?

1 MS. CONNOR: Yes, your Honor, I have an
2 affidavit of service with me.

3 THE COURT: Okay. Well, I want to get going
4 with the examination again and we'll get back to this.

5 MS. CONNOR: Yeah. I understand, I just
6 wanted to draw it to the court's attention as soon as I felt
7 it was appropriate.

8 THE COURT: I understand. If you could
9 provide me a copy of the affidavit of service, I'd appreciate
10 that.

11 MS. CONNOR: Yes, your Honor.

12 THE COURT: Okay. Are you ready?

13 THE WITNESS: Yes.

14 THE COURT: Ms. Collins, will you please take
15 the stand again.

16 THE CLERK: Ms. Connor, I can make a copy of
17 that if you need it.

18 MS. CONNOR: Thank you.

19 THE COURT: Bruce, please bring the jury in.

20 (Jury Present, 9:39 a.m.)

21 THE COURT: Okay, ladies and gentlemen. Thank
22 you for your patience. Before we started this morning, we
23 had legal issues to deal with, which was the delay in getting
24 started and we didn't start right at 9:00, and in discussing
25 those issues, you know, this is a case that, of some

1 sensitivity, and Ms. Collins got upset before we even
2 started, and nobody wants you to have the impression that
3 Mr. Andrews' questioning was the thing that caused her to be
4 upset, Ms. Collins was upset before you even came into this
5 courtroom. So I apologize for having to take another break,
6 but I thought it was appropriate so that Ms. Collins could
7 compose herself and Mr. Andrews could have an opportunity to
8 cross-examine her when she was a little more composed. So
9 thank you for your patience, and Mr. Andrews, go ahead.

10 MR. ANDREWS: Thank you, your Honor.

11 Q Ms. Collins. We were talking about -- we were
12 starting to talk about the wallet incident. You know what
13 I'm referring to generally, your testimony yesterday about
14 when you left your wallet in your lunch bag?

15 A Yes.

16 Q Okay. And I think yesterday we established
17 that the wallet incident happened late spring or early summer
18 2005, before June 24, 2005; would you agree with that?

19 A Yes.

20 Q Okay. And on that day, whatever the specific
21 day was, you were assigned to go to C block and take inmates
22 to lunch, correct?

23 A Yes.

24 Q And you asked an officer sitting behind the
25 desk on C block if you could leave your bag under the stairs

1 nearby?

2 A That's correct.

3 Q Okay. You didn't tell the officer at the desk
4 that you were leaving your ID and your badge in the bag,
5 correct?

6 A I did not tell him but I was talking to him
7 when I placed it in the side of my bag, yes.

8 Q So he saw you placing it in your bag?

9 A I cannot say if he saw that, I was talking to
10 him when I was putting my bag under the step.

11 Q Okay. So you're not sure if he saw that or
12 not?

13 A No, I'm not.

14 Q Okay. And you went ahead and you put your
15 lunch bag or box under the stairs on C block, correct?

16 A Yes.

17 Q And your wallet with your ID and your badge
18 were in the pocket of the lunch container?

19 A That's correct.

20 Q Okay. You took inmates to lunch, correct?

21 A Yes.

22 Q And that would have taken roughly half an
23 hour?

24 A Probably a half hour to 45 minutes, yes.

25 Q Half hour to 45 minutes, okay. You returned

1 to C block, correct?

2 A Yes.

3 Q You retrieved your lunch container?

4 A Yes.

5 Q And you moved on to your next assignment?

6 A Yes.

7 Q And at that point, you didn't realize your
8 wallet was missing from the bag?

9 A No, I did not.

10 Q Okay. Now you understand that your ID and
11 your badge were supposed to be on your person at all times,
12 correct?

13 A Yes, your ID is, yes.

14 Q Are you supposed to -- is it okay to leave
15 your badge in your lunch bag?

16 A No, some people don't carry their badges.

17 Q I'm asking what you're supposed to do or not
18 supposed to do.

19 A Oh, no.

20 Q You're supposed to have that on your person
21 also, correct?

22 A If you bring it into the facility, yes.

23 Q And you had brought it into the facility on
24 that day?

25 A Yes.

1 Q Okay. Now, you understand that if Sergeant
2 Mitchell discovered that you had left your ID and your badge
3 not on your person, that it would be appropriate for him to
4 secure it and to bring it to you, correct?

5 A Yes.

6 Q Okay. Now, you testified yesterday that
7 Officer Mitchell called you, is that correct?

8 A He did.

9 Q And at that point in time, you still didn't
10 know that your wallet and your badge were missing?

11 A That's correct.

12 Q And he told you that an inmate had found your
13 wallet in the trash?

14 A That's what he said, yes.

15 Q And this was the first time that you knew that
16 your wallet was out of your possession?

17 A Correct.

18 Q And this, you know, you had left it under the
19 stairs for a half hour or 45 minutes?

20 A Yes.

21 Q Okay. You called your -- you called Sergeant
22 Mitchell a liar when he told you that an inmate -- when you
23 say he told you that an inmate found the wallet in the trash,
24 correct?

25 A Yes, I did.

1 Q Well, isn't that a serious thing, to call a
2 superior officer a liar?

3 A Sergeant Mitchell lied to me. I told him --

4 Q Isn't it a serious thing to call your superior
5 officer a liar?

6 A If my superior officer lied to me, I would say
7 no, I would point out that he was a liar.

8 Q But Ms. Collins, you didn't know where your
9 wallet and your -- with your badge and your ID were, correct?

10 A I had my lunch box with me at all times after
11 I picked it up from under the step, I had no reason to assume
12 that it wasn't in the bag.

13 Q So you called him a liar because you thought
14 it was still in your bag?

15 A No, I called him a liar because he said an
16 inmate found it in the trash.

17 Q You didn't know what had happened to your
18 wallet with your badge and your ID at that point in time, did
19 you?

20 A There was no way an inmate could have --

21 Q Listen, these are yes-or-no questions, if you
22 can't answer it yes or no, then let me know but at that point
23 in time you did not know what had happened to your wallet
24 with your ID and your badge, correct?

25 A Correct.

1 Q So you couldn't know, you knew Sergeant
2 Mitchell said he had the wallet, correct?

3 A Yes.

4 Q But you didn't see him come into possession of
5 the wallet, correct?

6 A That's correct.

7 Q So you couldn't know how he came into
8 possession of the wallet, could you?

9 A That's correct.

10 Q So you couldn't know whether an inmate had
11 handed it to him, having found it in the trash?

12 A No, that's not correct.

13 Q Well, the officer who saw you putting it in
14 your bag could have taken it out and thrown it in the trash,
15 couldn't he have?

16 A No.

17 Q Why not?

18 A Because that would assume that an officer
19 would have stolen my wallet.

20 Q Well, you've accused Sergeant Mitchell of
21 having stolen your wallet so why couldn't an officer have
22 done it? In fact, you have no idea other than what Sergeant
23 Mitchell actually told you as to how he came into possession
24 of your wallet, correct?

25 A Yes, I do.

1 Q How do you know?

2 A Because Sergeant Mitchell told the lieutenant
3 when we met that he took the wallet out of my bag.

4 Q Did you -- oh, you heard him say that?

5 A Yes.

6 Q Okay. So at that point he was saying he took
7 it out of his bag, out of your bag, correct?

8 A No, sir, that's not correct. At that point he
9 told me an inmate found it in the trash.

10 Q Well, that's what you say he told you,
11 correct?

12 A Yes, that's correct.

13 Q He's consistently denied that, isn't that
14 true?

15 A No.

16 Q Were you at Sergeant Mitchell's deposition?

17 A Yes, I was.

18 Q And did he say that he told you that he found
19 it in the trash?

20 A I don't remember what he said at his
21 deposition.

22 Q Okay, well, we'll get to his testimony
23 eventually. At the moment that he called you, you didn't
24 know how he had come into possession of the wallet with the
25 badge and the ID, correct?

1 A That's correct.

2 Q So you had no idea?

3 A That's correct.

4 Q Okay. So when you called him a liar, you
5 couldn't really know he was a liar?

6 A Yes, because there was no inmates out at the
7 time my wallet was under the steps.

8 Q You were gone for a half hour to 45 minutes,
9 correct?

10 A Correct.

11 Q So you don't know what happened during that
12 half hour to 45 minutes, correct?

13 A That area is manned by an officer at the desk.

14 Q And again, the officer at the desk who saw you
15 perhaps put your wallet into your bag could have taken it out
16 and thrown it into the trash where an inmate was, couldn't he
17 have?

18 A Possibly.

19 Q Okay. So for all you knew at that point in
20 time, it may have happened the way Sergeant Mitchell said it
21 happened, you say he said it happened?

22 A Yes.

23 Q Okay. Now again, there was no sexual content
24 to this incident, correct?

25 A No.

1 Q No, there was not any sexual content?

2 A No, there was not.

3 Q Do you know if Sergeant Mitchell ever caught a
4 male officer without his badge and ID on that officer's
5 person?

6 A No, I do not.

7 Q Okay. Now I'd like to move to November 2005,
8 okay?

9 A Okay.

10 Q You met with the superintendent of Auburn
11 Correctional Facility on November 9, 2005, correct?

12 A Correct.

13 Q And you talked about some complaints that you
14 had?

15 A That's correct.

16 Q And the superintendent told you that some of
17 them had to be handled by the office of diversity?

18 A No, I do not believe he told me that at that
19 time.

20 Q You don't believe he did, okay?

21 A No.

22 Q Well, let me ask you this. You were not fully
23 satisfied with his response, were you?

24 A That's correct.

25 Q And somebody said that in fact you had the

1 right to sue if you weren't satisfied, correct?

2 A I brought up seeing a lawyer, yes.

3 Q And as you -- you testified yesterday that the
4 superintendent then said that you had the right to sue in
5 court?

6 A Correct.

7 Q The next day you were assigned to work on C
8 block where Sergeant Mitchell was the sergeant, correct?

9 A That's correct.

10 Q And your job was at first, as first officer?

11 A That's correct.

12 Q And so you mostly stayed at the desk but you
13 did rounds once or twice, is that correct?

14 A One round in the afternoon.

15 Q Okay. And as sergeant for that block,
16 Sergeant Mitchell had responsibility in different places
17 around the correctional facility, isn't that correct?

18 A Correct.

19 Q Okay. So he wasn't there all day long,
20 correct?

21 A No, when -- he did run the inmates to chow.

22 Q Okay. So you allege that Sergeant Mitchell
23 made several obscene statements to you, correct?

24 A Yes.

25 Q And a couple that were just kind of gross,

1 that really didn't have sexual content; is that a fair
2 statement?

3 A Yes, that's fair.

4 Q And again, Sergeant Mitchell has consistently
5 denied making those statements, correct?

6 A That's correct.

7 Q You've never produced a witness who supported
8 your claims as to what Sergeant Mitchell allegedly said on
9 November 10, 2005, have you?

10 A That's correct.

11 Q Okay. Now on that day, someone put tape on
12 your reading glasses, correct?

13 A Yes.

14 Q And is it accurate that those reading glasses
15 only had one arm on them?

16 A That is not true.

17 Q Okay. Now, again, you've never suggested that
18 Sergeant Mitchell taped your glasses, correct?

19 A No, I did not.

20 Q And there's nothing gender specific about
21 taping someone's glasses, correct?

22 A No.

23 Q There's no sexual content to that act?
24 Correct?

25 A That's correct.

1 Q Now you became very upset when you found that
2 your glasses had been taped, isn't that accurate?

3 A I had been upset.

4 Q You became -- you lost control of yourself
5 when you found that your glasses had been taped, correct?

6 A I became more upset, yes, that's correct.

7 Q You became extremely upset?

8 A Yes, I did.

9 Q You screamed?

10 A I did raise my voice.

11 Q You cried?

12 A Yes, I did.

13 Q Okay. And you were really angry about it?

14 A I was very angry about it.

15 Q Okay. And you were angry that Sergeant
16 Mitchell would not relieve you?

17 A Yes.

18 Q And at some point, and it wasn't clear to me
19 whether it was that day or the next day but you prepared a
20 to-from to Sergeant Mitchell?

21 A Yes, I did.

22 Q Was it that day or the next day? I wasn't
23 clear.

24 A That would have been that evening when I got
25 home.

1 Q Okay. So it was still on November 10th but
2 after your shift had ended?

3 A Yes.

4 Q Now yesterday, you testified twice that a
5 to-from is personal correspondence from an officer to another
6 officer or a supervisor, correct?

7 A That's correct.

8 Q Okay. And you addressed the to-from just to
9 Troy Mitchell?

10 A Yes.

11 Q But you also gave it to his supervisor?

12 A Yes.

13 Q So it really wasn't personal correspondence
14 from you to Sergeant Mitchell, was it?

15 A Yes, it was.

16 Q Well, when you shared it with someone else, it
17 really wasn't personal correspondence to Sergeant Mitchell,
18 was it?

19 A I believe the correspondence to Sergeant
20 Mitchell was a personal correspondence, yes, I do.

21 Q Okay. Even though you gave it to somebody
22 else?

23 A Yes.

24 Q Okay. You're now complaining about some items
25 being thrown on the plexiglass over the desk at C block,

1 correct?

2 A Yes.

3 Q And you believe that was harassment or that's
4 what you're testifying now?

5 A Yes.

6 Q Okay. Now, not only have you never suggested
7 that Sergeant Mitchell threw any of those items, you don't
8 believe he did, correct?

9 A That is correct, I don't believe he did.

10 Q Okay. And you can't say why any of those
11 items were thrown?

12 A No.

13 Q Okay. Now you testified that male officers
14 were sometimes also harassed, correct?

15 A Correct.

16 Q Would you agree that sometimes people bring
17 torment on themselves because of their reaction to things?

18 A Yes.

19 Q Okay. It doesn't necessarily relate to their
20 gender when that happens?

21 A Correct.

22 Q Okay. Do you recall attending an
23 investigatory conference with the New York State Division of
24 Human Rights?

25 A Yes.

1 Q And questions were asked of various people,
2 including yourself?

3 A Yes.

4 Q And you talked about the items being thrown on
5 the plexiglass?

6 A Yes.

7 Q And you said that you didn't take it
8 personally?

9 A Yes, you will have to refresh my memory with
10 that because I've never seen anything to do with that
11 investigation.

12 Q So you don't recall?

13 A No. I recall telling them, but I don't recall
14 the details of it.

15 Q You don't recall, that's fair enough.

16 A Yeah.

17 Q We can cover that later. Now you testified
18 that on November 10, you received about 10 hangup calls?

19 A Well, I would say more than 10 because they
20 were continuing through the afternoon, yes.

21 Q Well, yesterday you said 10, correct?

22 A Yes, okay.

23 Q And now you're complaining that the hangup
24 calls you received on November 10th was also harassment, is
25 that correct?

1 A Yes.

2 Q You were told at the time that the hangup
3 calls happened regularly, correct?

4 A I don't know if I was told at that time or I
5 heard that at deposition.

6 Q Well, does your November 10th memorandum make
7 reference to the fact that you were told that that happens
8 all the time?

9 A I -- I don't remember, but I was told that, I
10 don't remember when I was told it.

11 Q I'm going to --

12 THE COURT: Yes, go ahead, that's fine.

13 Q You're talking about -- your memorandum is
14 talking about the hangup calls, okay?

15 A Okay.

16 Q And it says, "I'm told this is an everyday
17 occurrence. If it is, maybe something should be done about
18 this." Does that refresh your recollection?

19 A Yes, it does.

20 Q Okay. So you had been told by the time you
21 wrote your memorandum that that happened often?

22 A Yes.

23 Q And you accepted that?

24 A Yes.

25 Q Okay. Now in the same memo, you asked

1 Sergeant Mitchell that he never again say the things that you
2 accuse him of saying, isn't that true?

3 A That's correct.

4 Q Okay. Now, after November 10th, you continued
5 to work at Auburn until December 7th, 2010 [sic], correct?

6 A Yes.

7 Q And that was roughly a month, little less than
8 a month?

9 A Yes.

10 Q You're not alleging that Sergeant Mitchell
11 made any inappropriate remarks to you during that time,
12 correct?

13 A That's correct.

14 Q In fact, you and Sergeant Mitchell never spoke
15 again at Auburn prison or at Eastern prison where you both
16 worked later, correct?

17 A That's not correct.

18 Q You had a personal conversation at some point?

19 A Yes, in the mess hall, I believe that happened
20 after, about an inmate.

21 Q The inmate with the bulge in his pants?

22 A Yes.

23 Q And I think your testimony was that that was
24 before November 10th?

25 A Okay.

1 Q But let's just cover that quickly so everybody
2 knows what we're talking about, okay?

3 A Okay.

4 Q There was an incident in the mess hall where
5 you observed an inmate with a bulge in the front of his
6 pants?

7 A Correct.

8 Q And you reported that to someone else,
9 correct?

10 A That's correct.

11 Q And that was reported to Sergeant Mitchell?

12 A That's correct.

13 Q And Sergeant Mitchell and perhaps someone else
14 took the inmate out, searched him and possibly prevented
15 something bad from happening?

16 A That's correct.

17 Q Okay. There was no joke about the bulge in
18 his pants, correct?

19 A By other officers, yes.

20 Q Not by Sergeant Mitchell?

21 A No.

22 Q So there's nothing that Sergeant Mitchell does
23 during that event, regardless of when it occurred, that you
24 allege was harassing, correct?

25 A That's correct.

1 Q Okay. Now you transferred to Eastern and
2 started work in March of 2006, correct?

3 A Yes.

4 Q Okay. And at some point, you learned that
5 Sergeant Mitchell was gonna be transferred to Eastern?

6 A That he was transferred there, yes.

7 Q So you didn't learn about it until after the
8 transfer had occurred?

9 A That's correct.

10 Q Okay. But you had no knowledge as to the
11 circumstances that resulted in the transfer?

12 A Yes, I did.

13 Q I thought you said yesterday that you really
14 didn't know.

15 A Well, I knew that he was promoted to
16 lieutenant and he came on a promotion.

17 Q Okay. And in fact when you're promoted, you
18 generally switch facilities, correct?

19 A That's correct.

20 Q Okay. But you didn't know whether he was
21 offered other facilities at that time, correct?

22 A No, I did not.

23 Q Okay. But you knew he was at Eastern. And
24 you believe that the transfer itself was retaliatory,
25 correct?

1 A I believe that on Sergeant Mitchell's part,
2 yes.

3 Q Why do you believe that on Sergeant
4 Mitchell -- let me ask you this. You never spoke to Sergeant
5 Mitchell about his reasons for transferring to Eastern?

6 A No, I did not.

7 Q You never asked him where he was offered other
8 choices or if he was offered other choices?

9 A I did not ask Sergeant Mitchell.

10 Q Okay. So your federal complaint alleges that
11 his transfer was retaliatory, isn't that correct?

12 A Yes.

13 Q Your federal complaint doesn't mention
14 anything about then Lieutenant Mitchell blocking your exit
15 from Eastern by sitting next to a gate, correct?

16 A I'm not sure what my federal complaint ...

17 MR. ANDREWS: Can I grab the document, your
18 Honor, Plaintiff's Exhibit 1?

19 THE COURT: Yes, you may.

20 MR. ANDREWS: May I approach the witness, your
21 Honor?

22 THE COURT: You may.

23 A Thank you.

24 Q Sure. If I could direct your attention to
25 paragraph 62. Do you see that's where it starts talking

1 about Sergeant Mitchell being transferred to Eastern,
2 correct?

3 A Yes.

4 Q And if you can read on, do you see anything
5 about Sergeant Mitchell blocking an exit by sitting next to a
6 gate?

7 A No.

8 Q And it doesn't say anything about, I'm sorry,
9 Lieutenant Mitchell staring at you in the yard at Eastern,
10 correct?

11 A That's correct.

12 Q You never spoke to Lieutenant Mitchell at
13 Eastern?

14 A That's correct.

15 Q Okay. He never spoke to you?

16 A That is correct.

17 Q So as of the time that you left Eastern on
18 medical leave, the two of you had not spoken since you were
19 at Auburn?

20 A That's correct.

21 Q And unless the incident with the inmate with
22 the bulge in his pants happened after November 10th, then the
23 last time you had spoken was on November 10th?

24 A That's correct.

25 Q Okay. Now, Troy Mitchell never disciplined

1 you, correct?

2 A That's correct.

3 Q He never wrote you up?

4 A That's correct.

5 Q You have no reason to believe he taped your
6 glasses?

7 A I'm not sure who taped my glasses.

8 Q Troy Mitchell never asked you to have sex with
9 him?

10 A No.

11 Q He never put his hands on you?

12 A No.

13 Q He never threatened you with any type of harm?

14 A No.

15 Q After you gave him the to-from dated
16 November 10th asking that he not say anything inappropriate
17 to you, the two of you never spoke again except possibly the
18 incident with the inmate with the bulge in his pants,
19 correct?

20 A That's correct.

21 Q But at Eastern, you pointed a rifle at him,
22 put him in the crosshairs and fantasized about shooting him?

23 A That's correct.

24 MR. ANDREWS: No further questions, your
25 Honor.

1 THE COURT: Mr. Andrews.

2 MR. ANDREWS: Can I approach for the exhibit,
3 your Honor?

4 THE COURT: Sure, absolutely. You have
5 redirect, Ms. Connor?

6 MS. CONNOR: Yes.

7 REDIRECT EXAMINATION BY MS. CONNOR:

8 Q I have some questions to follow up on the
9 questions that defense counsel has asked you, Penny. In the
10 beginning of your cross-examination by Ms. Sheehan for the
11 state defendants, you were asked quite a few questions
12 concerning different institutions that you requested on
13 transfer requests, and of the institutions that you
14 requested; were any of those co-ed?

15 A Yes, my number one request was to a co-ed.

16 Q Which one was that?

17 A That was to Willard.

18 Q And were any of the institutions that you
19 requested a transfer to not maximum security?

20 A Yes.

21 Q And which ones were those?

22 A Butler, Butler ASACTC, Woodbourne was not a
23 max, and I think that's all that wasn't a max.

24 Q Did you only want to work in maximum security
25 institutions?

1 A No.

2 Q I want to show you what's been Exhibit D23.
3 You testified that that's a transfer request of yours?

4 A Yes.

5 Q And what facility is on that request?

6 A That's Sullivan.

7 Q And why did you request Sullivan -- I'm sorry,
8 withdraw the question first. What's the date on the request?

9 A That is February 6, 2009.

10 Q And why did you -- why did you request
11 Sullivan?

12 A Because my son was there.

13 Q And why was that important to you?

14 A Because all along we had talked about working
15 together.

16 Q Now, also on cross-examination, you were asked
17 some questions concerning your service in the military; what
18 branch was that?

19 A It was the Army.

20 Q And what were the dates of your service, do
21 you recall?

22 A From July of '79 to November of '80.

23 Q And you were asked questions concerning the
24 conditions of your discharge?

25 A Yes.

1 Q And what's your understanding of what your
2 discharge was?

3 A I had a general discharge under honorable
4 conditions. It's, um, a separation with no disciplinary
5 action at all, it's just a separation that's mutually
6 agreeable for the benefit of both parties.

7 Q And how old were you at the time when you
8 entered the Army?

9 A I was 17 when I signed up, 18 when I went in.

10 Q And when you were discharged, how old were
11 you?

12 A 19.

13 Q Now, you were also asked some questions about
14 a former treatment with psychologists or providers related to
15 psychology. Prior to the information that we've already
16 provided, were you ever treated in the past by a
17 psychologist?

18 A Yes.

19 Q When was that?

20 A The first time was in December of 1981.

21 Q And what was the purpose of that treatment?

22 A My husband and I had had a recent fetal death
23 and I believed I was pregnant again, and the doctor thought
24 that I -- I was not pregnant, I just wanted to be pregnant
25 and he sent me to a psychologist.

1 Q And in fact, were you pregnant again?

2 A Yes, I was.

3 Q And were you treated again by a psychologist
4 after that?

5 A Yes.

6 Q When was that?

7 A That would have been in 1994.

8 Q And what was the purpose of that treatment?

9 A My husband had gotten laid off from his job
10 and I was finishing school and I asked to take nine classes
11 in one --

12 Q What school was this?

13 A That was at Florida Baptist Theological
14 College.

15 Q I'm sorry, go ahead.

16 A I asked to take nine classes in a semester so
17 that I could graduate earlier than I wanted to, and my dean
18 told me if I saw the psychologist and I could keep up and
19 still maintain my family life, that I would be allowed to do
20 that, and I saw a psychologist three times so that he could
21 monitor and then he released me.

22 Q And what's the normal class load in a semester
23 at that school?

24 A That was four to five classes.

25 Q I'd like to direct your attention to your

1 testimony about an incident concerning when an officer
2 squeezed between your legs, and you were asked some questions
3 concerning your efforts to identify the officer.

4 A Yes.

5 Q What efforts, if any, did you make to
6 determine who this officer was?

7 A I reported to the office of diversity
8 management that it was an off-shift officer and I gave a
9 description of him, and I also told Captain Rourke when I
10 spoke to him.

11 Q And at what facility did this take place?

12 A That took place at Auburn.

13 Q And what did you tell Captain Rourke?

14 A I told Captain Rourke what had happened and
15 that it was an off-shift officer.

16 Q And why was it significant that it was an
17 off-shift officer?

18 A Because --

19 Q To you?

20 A There's not that many off shifts at Auburn,
21 everybody comes and goes at the same time and there's very
22 few jobs where an officer comes at a different time.

23 Q To your knowledge, did Captain Rourke or
24 anyone from Auburn administration make any efforts to
25 identify that individual?

1 A No.

2 Q Now, you were also asked some questions
3 concerning an arrest?

4 A Yes.

5 Q And would -- were you arrested at any point?

6 MS. SHEEHAN: Your Honor, I object, beyond the
7 scope of direct. There were no questions regarding the
8 arrest, it was -- I did not ask --

9 THE COURT: Hold on, please. Come on up to
10 the bench.

11 (At Side Bar.)

12 THE COURT: Okay. The nature of your
13 objection, please.

14 MS. SHEEHAN: It's beyond the scope of direct,
15 regarding the arrest.

16 THE COURT: She's on redirect, so, you know,
17 beyond the scope of cross.

18 MS. SHEEHAN: Cross, thank you.

19 MS. CONNOR: Got that straight. At least.

20 MS. SHEEHAN: The testimony that I solicited
21 was that her physician, that she was arrested and that she
22 asked her physician if he would speak with the sheriff. I
23 did not ask any details about the arrest.

24 THE COURT: But the fact that you asked about
25 the arrest, that's fair that she will now ask what the arrest

1 was. You can't just leave it dangling out there, that's the
2 purpose of redirect, for her to get up and clarify some of
3 these things.

4 MS. SHEEHAN: Fair enough.

5 THE COURT: Okay.

6 (Open Court.)

7 THE COURT: Okay, Ms. Connor, go ahead,
8 please.

9 MS. CONNOR: Thank you, your Honor.

10 Q Do you have water up there? You okay?

11 A I do, thank you.

12 THE COURT: That pitcher should be full if you
13 need more.

14 THE WITNESS: Thank you.

15 THE COURT: Asking about an arrest.

16 Q Were you ever arrested?

17 A Yes.

18 Q When did that take place?

19 A That was in September of 2008.

20 Q And what took place concerning this arrest?

21 A I was driving alone in my car, going up a hill
22 by my home and a sheriff's deputy came up behind me and put
23 the lights on to pull me over.

24 Q Then what happened?

25 A I was on a windy road with no end so I rolled

1 down my window and I moved my hand letting him know that I
2 would go to the top of the hill because the road went like
3 this (indicating), and I went to the top of the hill, and I
4 pulled over to the side. And I was very anxious because I
5 hadn't done anything, I wasn't speeding, my car was okay, and
6 so I pulled over and he got out and I had a panic attack.

7 Q Go ahead.

8 A So I -- I said to him, I need to get home, I
9 live just around the corner, because the top of the hill was
10 here and all I had to do was go like that to get in my
11 driveway. And I said, I need to get home, please, I'm very
12 sick, and he stepped back and he screamed at me, he put his
13 hand on his weapon and he screamed at me to get out of the
14 car. And I had a flashback and I rolled -- I rolled up the
15 window, and I drove very slowly, I drove 5 miles an hour
16 until I got in my driveway, and he -- I was starting to get
17 out of the car, he told me to turn around, put my hands
18 behind my back and kneel down, and when I -- I had gotten
19 turned around, and I was starting to put my hands behind my
20 back and he, um, was already on top of me on the ground. But
21 I was in my driveway, and so ...

22 Q And were you arrested at that point?

23 A Well, no, we stayed in the driveway for a long
24 time. I was taken, later on, I was taken to the court in
25 Marcellus.

1 Q And were you ever convicted of anything as a
2 result of that incident?

3 A No.

4 Q You know what you were charged with?

5 A I don't even know that because after they
6 found out the circumstances, it just disappeared.

7 Q Now, on cross-examination, you were asked some
8 questions concerning defendant Mitchell at Eastern.

9 A Yes.

10 Q And you were asked some questions concerning
11 his conduct at the gate one day.

12 A Yes.

13 Q Please describe what defendant Mitchell did at
14 the gate.

15 A I was an off-shift officer because as soon as
16 he got there, I bid -- or I put in for jobs that were off the
17 regular hours so that I would not pass him in the lineup
18 room. And so I was coming out of the facility from my early
19 shift at an earlier time and Lieutenant Mitchell was sitting
20 in front of the only door that I had to get out, that
21 officers had to get out of the facility.

22 Q What was that door called?

23 A Ooh, I'm not sure, it was just the door from
24 the yard, the back of the facility to the front.

25 Q And how was he positioned with respect to the

1 door?

2 A He was sitting, leaned back with his feet up
3 on the officer's desk there. His legs were crossed and he
4 was leaning back like this and he was in the doorway. You
5 could get around if you went to him and walked around his
6 seat.

7 Q Where were his feet?

8 A They were up on the officer's desk.

9 Q And where was his back?

10 A His back was actually leaning back in a chair
11 that pushed back.

12 Q And when you were trying to leave the
13 facility, was this a time that many officers were leaving?

14 A No, I was the only officer leaving.

15 Q Why was that?

16 A Because my job required me to leave at a
17 different time.

18 Q Now, you also testified concerning defendant
19 Mitchell looking at you in the yard on cross-examination.

20 A Yes.

21 Q Would you please describe what he did in the
22 yard.

23 A I was in the yard processing inmates into the
24 yard, and I was, I was wandering. I had -- it's like a hand
25 scanner, and I was posted by the -- when he first came out I

1 was posted by the gate on the right side, there were officers
2 on the right side and officers on the left side, and I was
3 standing here, and Lieutenant Mitchell came out and he stood
4 there at the side and we'd never had a lieutenant come and
5 stand there before while we were processing in the yard. And
6 he stood there, and he leered. And I -- there are other ways
7 to intimidate people than physical intimidation, this was
8 pretty constant with first Sergeant Mitchell and then
9 Lieutenant Mitchell. He looks at you, and he just --

10 MR. ANDREWS: Well, objection, your Honor.

11 THE COURT: Yeah, I'll sustain the objection,
12 that will be stricken.

13 Q Okay. I just want to direct your attention to
14 what he did in the yard.

15 A Okay. He watched me wandering, and I moved to
16 the other side, another officer wand and I moved to the other
17 side. I was away from him and he was watching me, what I was
18 doing over there.

19 Q And how was he watching you?

20 A Just (indicating).

21 Q You have to speak words.

22 A I'm trying to get these words.

23 Q The record can't reflect the --

24 A Trying to get these words out. He was just
25 leering. And laughing.

1 Q Now you testified on cross-examination
2 concerning an incident where you noticed a bulge in an
3 inmate's -- where was the bulge?

4 A It was in the front of his pants.

5 Q And you testified that Officer Mitchell and
6 you interacted with respect to this incident with the inmate.
7 And you testified that officers had made comments concerning
8 the bulge as jokes, do you recall that?

9 A Yes, I do.

10 Q And was Lieutenant -- withdrawn. Was Sergeant
11 Mitchell at the time --

12 MR. ANDREWS: Objection.

13 Q -- the defendant in this case, present during
14 those comments?

15 A No, he was not.

16 THE COURT: You withdraw your objection?

17 MR. ANDREWS: I do withdraw my objection, your
18 Honor.

19 THE COURT: Okay.

20 MS. CONNOR: Your Honor, may I have just a
21 moment, please.

22 THE COURT: You may.

23 MS. CONNOR: Thank you.

24 (Pause in Proceedings.)

25 MS. CONNOR: I have no further questions for

1 the witness, thank you, your Honor.

2 THE COURT: Thank you, Ms. Connor. Is there
3 any recross?

4 MS. SHEEHAN: There is, your Honor, very
5 short.

6 THE COURT: Okay. Be careful when you say
7 those things, I've been known to hold people to it. Go
8 ahead.

9 RECROSS-EXAMINATION BY MS. SHEEHAN:

10 Q Ms. Connor, your arrest on September 13th --

11 MS. CONNOR: Excuse me, I'm Ms. Connor, she's
12 Ms. Collins. I just want the record to be clear who's who at
13 least in this. Thank you.

14 Q Ms. Collins, your arrest of September 13th,
15 2007, you were no longer working at Auburn, correct?

16 A That's correct.

17 Q And the state of New York had nothing to do
18 with your arrest, is that correct?

19 A That's correct.

20 Q The Department of Corrections had nothing to
21 do with your arrest?

22 A With the arrest, no.

23 Q Okay. Former Commissioner Goord had nothing
24 to do with your arrest?

25 A No.

1 Q Defendant Burge had nothing to do with your
2 arrest?

3 MS. CONNOR: Your Honor, we'll stipulate to
4 this.

5 THE COURT: Thank you, Counsel. It's
6 cross-examination, go ahead.

7 Q Regarding the incident where an officer
8 squeezed between your legs, did you go to the hostage photos
9 to try to identify the officer?

10 A No, I did not.

11 MS. SHEEHAN: Thank you, your Honor, no
12 further questions.

13 THE COURT: Thank you. Mr. Andrews, any
14 recross?

15 MR. ANDREWS: I have no further questions,
16 your Honor.

17 THE COURT: Ms. Collins, you may step down.

18 THE WITNESS: Thank you.

19 (Whereupon the witness was excused.)

20 THE COURT: All right. Ms. Connor, would you
21 call your next witness, please.

22 MS. CONNOR: May I have one moment, please,
23 your Honor.

24 THE COURT: You may.

25 MS. CONNOR: Because he's not in the

1 courtroom.

2 THE COURT: That's fine. You can have
3 somebody go get him.

4 MS. SHEEHAN: Your Honor, may we get the name
5 of the next witness.

6 MS. CONNOR: John Hoefling.

7 MS. SHEEHAN: Thank you.

8 MS. CONNOR: Your Honor, with your permission,
9 I may be able to expedite it if I go out there.

10 THE COURT: All right. Why don't both counsel
11 go out and come back. Anybody need a bathroom break over
12 there? Go ahead, please don't talk about it, don't let
13 anybody else talk about it, go ahead, just go out and use the
14 facilities and you can come back. Everybody can feel free to
15 go, if you want to stand up, walk around a little bit, it's
16 up to you, or you can stay put. I don't want to take another
17 break, not at this point, because we got started late, and
18 I'd like to try and keep going.

19 (Pause in Proceedings.)

20 THE COURT: Ms. Connor, you have your witness?

21 MS. CONNOR: Yes.

22 THE COURT: Ready to go?

23 MS. CONNOR: Yes.

24 THE COURT: Rita, would you bring them in,
25 please.

1 (Jury Present, 10:25 a.m.)

2 MR. ANDREWS: Your Honor, Ms. Sheehan I think
3 was running down the hall.

4 MR. KINSEY: We can start without her.

5 THE COURT: Okay, we have the ladies and
6 gentlemen of the jury, plaintiff, plaintiff's counsel,
7 defendant, defense counsel, Ms. Connor, please call your next
8 witness. Wait a minute, I don't have my courtroom deputy.
9 Like herding cats here. Why don't you call your witness.

10 MS. CONNOR: The plaintiff calls John
11 Hoefling.

12

13 J O H N H O E F L I N G , called as a
14 witness and being duly sworn, testifies as follows:

15 THE COURT: Go ahead.

16 DIRECT EXAMINATION BY MS. CONNOR:

17 Q Good morning. Would you please tell the jury
18 your name.

19 A John Hoefling.

20 Q And are you currently employed?

21 A Yes.

22 Q Where are you employed?

23 A Sullivan Correctional Facility.

24 Q And who is your employer?

25 A New York State Department of Corrections.

1 Q And what do you do at Sullivan Correctional
2 Facility?

3 A Presently I'm a lieutenant, 3-to-11 watch
4 commander.

5 Q And how long have you worked for the New York
6 State Department of Corrections?

7 A Twenty-five years.

8 Q And how long have you worked at Sullivan
9 Correctional Facility?

10 A Since 2002, so about 10 years, give or take a
11 year.

12 Q And at the time that you've worked at
13 Sullivan, were you always a lieutenant?

14 A No, I was a sergeant from 2002 to 2007.

15 Q And then after, from 2007 through the present,
16 you're a lieutenant?

17 A Yes.

18 Q Now with the rank of lieutenant, what does a
19 lieutenant do in corrections?

20 A Depending on what your job is.

21 Q What is your current job?

22 A Current job is 3-to-11 watch commander.

23 Q What does a watch commander do?

24 A Basically 3-to-11 watch commander, you're in
25 charge of the facility.

1 Q And how long have you been the 3-to-11 watch
2 commander?

3 A About three years, two, three years.

4 Q And prior to that time, what job did you have
5 at Sullivan Correctional Facility?

6 A As a lieutenant?

7 Q We'll start there, yeah.

8 A I worked -- I had a resource job which was
9 midnight relief, day shift relief, I had resource job on
10 days, vacation relief, various jobs over -- before I got the
11 bid I have now.

12 Q You bid on your current job?

13 A Yes, I did.

14 Q And then prior to being a lieutenant, what
15 rank did you hold?

16 A I was a sergeant.

17 Q How long did you hold the rank of sergeant?

18 A From 2002 to 2007.

19 Q And were you -- withdrawn. As a sergeant,
20 what first -- what was your first job at Sullivan as a
21 sergeant?

22 A My first job I was resource, they put me where
23 they needed you, any shift, any job.

24 Q And after that, what did you do?

25 A I took a bid on afternoon which was a relief

1 job.

2 Q When did you take that bid?

3 A Sometime in 2003, maybe.

4 Q And how long did you hold that bid?

5 A Two years.

6 Q And after that, what did you do as a sergeant?

7 A I took a bid for BHU which was new housing
8 units that they opened up in the facility.

9 Q Now, when you started out working for the
10 Department of Corrections, what was your rank?

11 A When I first started in '86, I was an officer.

12 Q Is that a correction officer?

13 A Yes, correction officer.

14 Q Is it commonly known as a CO?

15 A CO, yes.

16 Q Where did you work?

17 A I worked Shawagunk, started at Eastern and
18 went to Shawagunk.

19 Q After Shawagunk, where did you go?

20 A I made sergeant in Bedford Hills, then I went
21 to Sullivan after that.

22 Q Now, are you familiar with the employee manual
23 for the New York State Department of Corrections?

24 A Yes, ma'am.

25 Q I'd like to show you what's been marked as

1 Plaintiff's Exhibit 6, and if you would please look at that
2 and identify it for me, if you can.

3 A This is the New York State Department of
4 Corrections employee manual that they give you, you sign for
5 when you start with the department.

6 Q And what's the date on that manual, please,
7 Lieutenant?

8 A Revised in 9/7 is the revision date.

9 Q That's September 2007?

10 A 9, yes, 9 of '07, yes, ma'am.

11 MS. CONNOR: At this time we offer Plaintiff's
12 Exhibit 6.

13 THE COURT: Any objection?

14 MR. KINSEY: Your Honor, we object because
15 this is remote in time both to his entrance and reception of
16 this, and also remote in time to when Ms. Collins came into
17 DOCS. If we're going to ask about specifics of the manual we
18 need to know if this manual is different than the original
19 manual.

20 THE COURT: Ms. Connor, do you have the manual
21 from the time in question?

22 MS. CONNOR: We have a manual that plaintiff
23 identified that had redactions in it, and this manual is a
24 complete manual from September '07 which does cover part of
25 the time that plaintiff worked for the New York State

1 Department of Corrections because she was not discharged
2 until -- or let go until sometime in 2009.

3 THE COURT: The issue would be are you going
4 to restrict your questions to '07 and forward, as far as
5 questions regarding this manual. In other words, we have no
6 idea of knowing at this time what the changes are.

7 MS. CONNOR: Your Honor, the purpose of this
8 identification is so that we can have a complete manual from
9 '07 on, without the redactions that were provided to
10 plaintiff. And I had not planned on asking the witness any
11 further questions about it.

12 MR. KINSEY: Your Honor, if we're going to
13 continue to argue this, can we do it either out of the
14 presence of the jury or side bar.

15 THE COURT: Come on up, please.

16 (At Side Bar.)

17 THE COURT: Okay. The objection is that the
18 manual that you're offering is not covered as far as the
19 dates in question of the claims in this lawsuit. Go ahead.

20 MS. CONNOR: Well, your Honor, the manual has
21 wide spread of policies concerning employee benefits,
22 concerning different offerings, compensation, like, rules
23 that apply to all employees in the Department of Corrections.
24 This witness is able to authenticate it because he's familiar
25 with this manual from 9/07. Its sole purpose is to have the

1 rules of the -- the rules and the benefits and the
2 compensation types of packages that are offered to the
3 employees in the record.

4 MR. KINSEY: Well, the manual also contains
5 security information, I mean, contains all sorts of
6 information that doesn't speak to this. So I'm at a loss to
7 know why we need the entire thing. We can either redact out
8 the stuff that's not responsive, or they can simply pull
9 those pages that they think they need in the record to show
10 compensation.

11 THE COURT: Certainly a document of your
12 client, right, that you recognize.

13 MR. KINSEY: From 2007 forward, exactly.

14 THE COURT: Correct.

15 MR. KINSEY: And this individual's being asked
16 about a period in 2002 and 2003.

17 THE COURT: Do we have the manual from 2002,
18 2003?

19 MS. CONNOR: The plaintiff authenticated and
20 had the manual in evidence, we put the manual in evidence
21 from the time that she -- that she recognized when she worked
22 there, but this is the updated version that the plaintiff
23 could not authenticate so I wanted -- because it does cover a
24 period of time, may cover matters with respect to witnesses
25 that the defense wants to call, and I want to make sure that

1 the manual is in evidence so the jury gets the continuous
2 picture.

3 THE COURT: Yeah, but the point is, then we
4 need the manual from 2002 forward during the time periods
5 that she's working if that's what you're trying to do, to be
6 fair, so that everything's covered.

7 MS. CONNOR: The plaintiff has authenticated,
8 there is a manual already been admitted, your Honor.

9 MR. KINSEY: Exactly, and we redacted that.

10 MS. CONNOR: But there's redactions in it.

11 THE COURT: Okay.

12 MS. CONNOR: And this manual does not have
13 redactions.

14 MR. KINSEY: And they were redacted for a
15 purpose.

16 THE COURT: The purpose was because she
17 couldn't recognize them.

18 MR. KINSEY: Exactly.

19 THE COURT: This officer does apparently.

20 MR. KINSEY: No, they were taken out because
21 they were not in effect, they had to do with sexual
22 harassment and same sex.

23 THE COURT: They're not in there.

24 MS. CONNOR: No, you're talking about a
25 completely different manual, Counsel, that's not the manual

1 that we're talking about here, you're talking about the
2 sexual harassment training manual, this is the employee
3 manual.

4 MR. KINSEY: And you redacted that?

5 MS. CONNOR: No, you did.

6 THE COURT: One at a time, please.

7 MS. CONNOR: When you gave, when -- through
8 discovery, when you gave us the manual, there were
9 redactions. You gave this manual, also, there were no
10 redactions.

11 MR. KINSEY: Exactly.

12 MS. CONNOR: So you're talking about a
13 different manual.

14 MR. KINSEY: I stand corrected, Counselor,
15 thank you. If we redact this in the same way I'll withdraw
16 my objection but it needs to be redacted before it's publicly
17 available.

18 MS. CONNOR: You don't know what it is.
19 You're saying that without even knowing if it needs
20 redactions.

21 MR. KINSEY: I know it has security
22 information in it, that's why DOCS sent you a manual that had
23 been redacted.

24 MS. CONNOR: How do you know that?

25 THE COURT: Where did this manual come from?

1 MS. CONNOR: Department of Corrections.

2 THE COURT: It was supplied in discovery.

3 MS. CONNOR: Yes.

4 THE COURT: If it was supplied in discovery,
5 what is it that you're concerned about redacting?

6 MR. KINSEY: Well, first of all, your Honor,
7 and I'm not trying to give you a sob story, we picked this
8 case up well after discovery closed and there are boxes --

9 THE COURT: But if it was provided in
10 discovery --

11 MR. KINSEY: I understand it, but as the court
12 is aware, there are things provided in discovery oftentimes
13 that should have been redacted.

14 THE COURT: Have you seen this document?

15 MR. KINSEY: Not until it was presented.

16 MS. CONNOR: No, your Honor, it was provided
17 to them as part of our --

18 THE COURT: Ms. Connor, would you please get
19 the document, let Mr. Kinsey take a look at it, and I'm going
20 to receive it subject to any objection that he may have
21 concerning this document. I don't know what it would be
22 because it was provided by corrections.

23 MR. KINSEY: I understand.

24 MS. CONNOR: Your Honor, it was provided to
25 them as part of our pretrial disclosures as well.

1 MR. KINSEY: And we don't have any objection
2 as to authenticity, just whether or not it's relevant to the
3 time period she worked and whether or not this individual is
4 the most competent to say yes, this binds DOCS.

5 THE COURT: Okay.

6 MR. KINSEY: All right.

7 (Open Court.)

8 THE COURT: All right. I'm going to reserve
9 on the offer of Plaintiff's Exhibit 6 and you may continue.

10 MS. CONNOR: Thank you.

11 Q Are you familiar with the term chain of
12 command in the Department of Corrections?

13 A Yes, ma'am.

14 Q What does that term mean?

15 A That means you need to -- anything you need to
16 address that you're having issues with at the facility, you
17 need to go to your, the direct immediate supervisor.

18 Q And what is the chain of command in the
19 Department of Corrections?

20 A In the facility, it would be officer,
21 sergeant, lieutenant, captain, deputy superintendent, and
22 then the superintendent.

23 Q And to a person holding the job of corrections
24 officers, correction officer, rather, who would be that
25 individual's supervisors?

1 A Sergeants.

2 Q And would lieutenants also supervise
3 corrections officers?

4 A They do, but the immediate supervisor for an
5 officer would be a sergeant.

6 Q Could a lieutenant give a direct order to a
7 correction officer?

8 A Yes.

9 Q And would the correction officer be duty bound
10 to comply with that order?

11 A With a lawful order, yes.

12 Q Likewise could a sergeant give a direct order
13 to a correction officer?

14 A Yes.

15 Q And would the correction officer be duty bound
16 to comply with that order?

17 A A lawful order, yes.

18 Q Now, do you know the plaintiff Penny Collins?

19 A Yes, I do.

20 Q And how long have you known her?

21 A Probably around 20 years.

22 Q How did you first meet her?

23 A Our children went to school together.

24 Q Now, did you -- did there come a time when you
25 worked with Penny Collins?

1 A When she transferred into Sullivan
2 Correctional Facility as an officer, yes.

3 Q And how long did you work with her there?

4 A Probably around a year, I think she was at the
5 facility about a year.

6 Q Approximately how many security personnel are
7 there at Sullivan, to the best of your recollection?

8 A Right now?

9 Q Withdrawn. When you worked with Penny Collins
10 at Sullivan, approximately how many security personnel were
11 there at Sullivan?

12 A 300, 325, somewhere around there.

13 Q And do you know how many civilian employees
14 there were?

15 A No, I don't.

16 Q Now, when the plaintiff first started working
17 at Sullivan Correctional Facility, where did you work at
18 Sullivan?

19 A I believe at the time I had the relief bid.

20 Q What is a relief bid?

21 A Relief bid is, you assume the job of people,
22 of other supervisors on their days off.

23 Q What rank did you hold at the time?

24 A I was a sergeant.

25 Q Were there particular areas in the facility

1 that you worked at that time?

2 A Yes, I worked down at the annex which was
3 considered a separate facility, worked in the main -- both in
4 the kitchen and as the assistant watch commander.

5 Q What does an assistant watch commander do?

6 A He does all the staffing for the shift, he
7 does, checks officers when they come in, when they assign
8 them jobs, do assignments for the next day, and you make all
9 assignments throughout the shift.

10 Q Is that any different role than a chart
11 sergeant?

12 A That's what a chart sergeant does, ma'am.

13 Q So what's the difference between a chart
14 sergeant and assistant watch commander?

15 A Just the name, basically the same job, there
16 are other duties you have in a facility you're in charge of
17 as a supervisor besides the watch commander, assistant watch
18 commander.

19 Q Okay. I'm sorry, can you repeat that answer?
20 I don't understand what you said.

21 A You have other duties besides being just
22 assistant watch commander, there are other duties within the
23 facility that you have to perform.

24 Q That may be different than a chart sergeant?

25 A No, it's the same thing, they're not just

1 doing staffing, they have other facilities they're in charge
2 of -- other areas of the facility you're in charge of.

3 Q Now did there come a time when you worked at
4 Sullivan, when you worked at Sullivan with Penny Collins, did
5 you become aware of any rumors concerning the plaintiff when
6 she worked there?

7 A There was rumors that we were sleeping
8 together, and she was sleeping with other supervisors.

9 Q And how did you become aware of that, the
10 rumor?

11 A I couldn't give you a specific name, just
12 stuff you hear.

13 Q Now, was she sleeping with you at the time?

14 A No, ma'am.

15 Q At any time?

16 A No, ma'am.

17 Q What were these rumors that you heard?

18 A That she would get favorable jobs because she
19 knew -- knew me, that I would take care of her in the
20 facility, and that we were sleeping together, and that's why
21 she got good jobs.

22 Q Did you hear any rumors that she was sleeping
23 with any other personnel of Sullivan Correctional Facility?

24 A I think there was a rumor that she was
25 sleeping with another sergeant, Sergeant Bennett I think his

1 name -- yeah, Sergeant Bennett. Excuse me.

2 Q Help yourself to water.

3 A I'm good.

4 Q Now, were there any ranked officers who
5 participated in these rumors, concerning the plaintiff and
6 yourself?

7 A As far as -- you mean sergeants, lieutenants?

8 Q Yes.

9 A I -- I don't remember anybody specific,
10 anybody specific making allegations.

11 Q Now did you ever discuss the plaintiff with
12 Lieutenant Keenan?

13 A Her name come up in a discussion with
14 Lieutenant Keenan, he made a comment to me about Officer
15 Collins.

16 Q What was that comment, please?

17 A That she must be sleeping with me because he
18 wasn't sleeping with her.

19 Q When did he say that?

20 A Just in a conversation, we were walking,
21 whether we were walking on rounds or just walking, and he
22 made the comment.

23 Q Did you respond to him?

24 A Yes, I did.

25 Q And can you paraphrase what you said?

1 A Um, I told him to go fuck himself.

2 Q Now, did you ever ride to work with the
3 plaintiff?

4 A At times, yes.

5 Q When was that?

6 A She needed a car, the car she was using,
7 something happened to it, was having some work done on it,
8 she didn't have a vehicle.

9 Q And was that near the beginning of her
10 employment at Sullivan?

11 A It might have been, it wasn't too long after
12 she got there that it happened.

13 Q Now did you ever talk to Ms. Collins
14 concerning any phone calls at the facility that she had been
15 receiving?

16 A When I was -- when I was a watch commander, I
17 mean assistant watch commander?

18 Q At any time.

19 A She had worked the job, I think it might have
20 been the tower where she was receiving hangup phone calls,
21 people making derogatory comments to her, just hanging up,
22 not identifying themselves.

23 Q And did you discuss this with Officer Collins?

24 A I think there was two separate incidents that
25 it happened. One time in the tower and one time when she was

1 working in I think the arsenal.

2 Q Let's -- with respect to the tower, let's
3 start there. Did Officer Collins report anything to you
4 concerning these phone calls?

5 A They were stopping her from doing her job
6 because she kept having to answer the phone, she couldn't
7 perform her duties.

8 Q Did she tell you the nature of the calls?

9 A One of the comments she made was one of the
10 officers told her that, asked her if her knees were dirty.

11 Q Did she tell you anything else concerning the
12 nature of the calls?

13 A I don't remember specifics.

14 Q Did she tell you that, how frequently the
15 calls came in?

16 A They were enough that they were keeping her
17 from doing her other jobs, doing the observations for which
18 she's supposed to be doing in the tower, yes.

19 Q And what, if anything, did you do concerning
20 Officer Collins' report to you?

21 A I believe I reported it to the watch commander
22 at the time, what was going on.

23 Q Who was that, please?

24 A I think at the time it was Lieutenant Reilly.

25 Q And what, if anything, happened concerning

1 these calls?

2 A I'm not sure, I don't think that's the time I
3 was going to try to -- was told to put the identification
4 phone in there. That was when she worked the arsenal, that
5 was a different time.

6 Q I'll direct your attention then to the calls
7 at the arsenal. What, if anything, did Officer Collins tell
8 you concerning calls she received at the arsenal?

9 A That, again, they were calling up, doing
10 hangups, making derogatory comments.

11 Q Did she say who they were?

12 A Who the officers were? No, nobody identified
13 themselves.

14 Q This phone system that these calls were made
15 on, is that an internal or external phone system?

16 A It's an internal system, ma'am.

17 Q And what else, if anything, did she tell you
18 about the calls at the arsenal?

19 A Once again, just they were derogatory in
20 nature, people asking her if she was, you know, she had dirty
21 knees, she was getting good jobs and just hanging up, making
22 her so she couldn't perform her duties.

23 Q Now you mentioned something concerning a
24 tracer phone?

25 A Certain phones in the facility, the watch

1 commander has, assistant watch commander, as the phone calls
2 come in, they're identified on a little LED screen.

3 Q Like a caller ID more or less?

4 A Like a caller ID, yes.

5 Q What if anything occurred with respect to the
6 tracer phone and these calls that Officer Collins reported to
7 you?

8 A I was told to see if the phone would work, ask
9 if they could identify where the phone calls were coming from
10 by the lieutenant.

11 Q Did you do that?

12 A I tried it, didn't work, there was only
13 certain phones that will accept the ID phone.

14 Q Now, did you ever see any signage material at
15 the facility concerning yourself and Officer Collins?

16 A There was a night when Officer Collins was
17 working PMS which is prisoner movement service in the watch
18 commander's office, assistant watch commander's area, and
19 somebody had called or stopped down and said that there was
20 some signs hanging outside the office.

21 Q And what occurred next?

22 A Officer Collins I believe went out and tore
23 them down and brought them in, was visibly upset. Angry,
24 crying.

25 Q Lieutenant, I'm going to show you what's been

1 marked as Plaintiff's Exhibit 20 and 21, if you would look at
2 those, please.

3 A Yes, ma'am.

4 Q Do you recognize those?

5 A Yes, those are the signs that were taken off
6 the wall.

7 Q And with respect to -- what is Plaintiff's 20,
8 Lieutenant, the one marked 20?

9 A "Johnny's Love Shack."

10 Q And then the other one says what?

11 A "Honeymooners, Do Not Disturb."

12 Q And did you have an understanding of who
13 Johnny was?

14 A That would be me.

15 Q Now, after Officer Collins showed you these
16 signs, what, if anything, did you do?

17 A I reported it to the watch commander, and
18 trying to remember who I had seen in the area at the time.

19 Q And did you report that to the watch
20 commander?

21 A Yes, I did.

22 Q And what, what -- what did you report
23 concerning who you saw in the area at the time to the watch
24 commander?

25 A I told him the only officer, there was only

1 one specific officer that I remember seeing in the area, but
2 you know, my attention wasn't there at all times. And I
3 reported who it was.

4 Q Who was that?

5 A Officer Royce.

6 Q Now what happened next with respect to the
7 signs?

8 A I don't know what happened to the signs, I
9 know I made a phone call to Officer Royce.

10 Q What did you say to Officer Royce in that
11 call?

12 A I told him that he crossed a line.

13 Q Did you say anything else?

14 A I don't remember what else I said, I was a
15 little upset, it was a little disrespectful to me, and
16 Officer Collins.

17 Q Did Officer Collins ever talk to you
18 concerning any other problems with Officer Royce?

19 A She told me Officer Royce would -- found out
20 she had a problem with flatulence or people farting in her
21 presence and he thought that was funny so every chance he
22 got, he made sure he -- or improvised, he made sure he did
23 it.

24 Q Now you've worked in corrections how long,
25 Lieutenant, again?

1 A Little over 25 years.

2 Q Now at the time Officer Collins was in
3 Sullivan, that was several years ago but up to that point,
4 how would you characterize the role of rumors in corrections?

5 MR. KINSEY: Objection, your Honor, in
6 corrections, it's so broad.

7 THE COURT: I'll sustain the objection, if you
8 can rephrase your question, please.

9 Q Lieutenant, are rumors common in corrections?

10 MR. KINSEY: Same objection, your Honor.

11 THE COURT: I'll overrule that one, go ahead.

12 Q Lieutenant, are rumors common in corrections?

13 A Yes, they are.

14 Q And are rumors, are rumors common with respect
15 to females in corrections?

16 A They're common, yes.

17 Q How common?

18 A It depends on how many females are working at
19 the facility, I would imagine.

20 Q Why do you say that?

21 A Different jails have different ratios of
22 females and male officers so if you work in Bedford Hills,
23 there's more rumors about male officers than females.

24 Q If you're a female working in a predominantly
25 male facility such as Sullivan, how common are rumors?

1 A You're asking me for percentage?

2 Q Your -- your description of that.

3 A Most of the time they're derogatory.

4 Q In what respect?

5 A That if you're not sleeping with somebody,
6 then there's something wrong with you, is probably the most
7 common.

8 Q Did Officer Collins ever talk to you about any
9 problems she had with Lieutenant Keenan?

10 A Yeah, she had told me she had an issue with
11 him, some of the comments he had made to her.

12 Q What did Officer Collins report to you about
13 that?

14 A One time he had grabbed his crotch and said
15 that he had a nice sausage for her, if she needed something.

16 Q And Lieutenant Keenan was your superior
17 officer at the time?

18 A Yes.

19 Q Do you recall anything else that Officer
20 Collins reported to you about Lieutenant Keenan?

21 A I don't remember specifics, there was ...

22 Q In general, what types of things did she
23 report to you about Lieutenant Keenan?

24 A Most of it was sexual in nature. Basically
25 wanted to date her, go out with her, take her out.

1 Q Did Officer Collins -- what was her reaction
2 to that?

3 A Um, she wasn't happy about it, I mean it's a
4 workplace.

5 Q Now, you worked as a chart sergeant you
6 testified at Sullivan?

7 A Yes.

8 Q And as a chart sergeant, did you have any
9 control or say about where and when Officer Collins worked?

10 A Very rarely. I mean I had the relief job so I
11 was only there one or two days a week so I really didn't get
12 to assign Officer Collins on a regular basis, no.

13 Q Did Officer Collins ever talk to you
14 concerning any reports that she made to other ranking
15 officers at Sullivan?

16 A I don't remember at this time, I don't -- I
17 don't remember.

18 Q Now when you worked with Officer Collins, did
19 she -- how did she conduct herself?

20 A As far as work?

21 Q Yes.

22 A I didn't have -- as far as I know she did a
23 good job. I mean I don't -- I didn't directly supervise her,
24 very rarely.

25 Q How often did you supervise her?

1 A Possibly once a week, if that.

2 Q And in the times that you supervised her, how
3 would you characterize her work?

4 A She did a good job.

5 Q Was there a perception among the officers of
6 Sullivan concerning Ms. Collins' femininity?

7 MR. KINSEY: Objection, your Honor.

8 THE COURT: Yeah, I'll sustain that.

9 Q Lieutenant, if one officer is disrespectful to
10 another officer in front of inmates, does that raise any
11 concerns to you as -- as an officer in the correction system?

12 A Yes.

13 Q And what are those concerns?

14 A There should be nothing like that discussed in
15 front of inmates, if you have a problem with other officers,
16 it's dealt with out of their presence.

17 Q If an officer is disrespectful to another
18 officer in front of inmates, does that raise any concerns?

19 A Yes, it does.

20 Q What concerns?

21 A Inmates use that type of information to -- to
22 their benefit, where they can -- they're very manipulative.

23 Q Did there come a time that you became aware of
24 whether Officer Collins was going to -- was seeking a
25 transfer from Sullivan?

1 A I believe she put a transfer in the day she
2 arrived at Sullivan.

3 Q And where was that to? I'm sorry, withdrawn.
4 Where was the request to?

5 A It was to Auburn.

6 Q And did you have any conversations with
7 Officer Collins concerning her working at Auburn?

8 A I told her it might not be a good place for
9 her to go.

10 Q Did you say why?

11 A Rumors more that it wasn't a female friendly
12 jail.

13 Q Why, where did you acquire that information?

14 A Corrections rumors, that's just -- you hear
15 through the grapevine.

16 Q What, if anything, did Officer Collins say to
17 you in response to that?

18 A She just wanted to go home, and Auburn would
19 be home for her.

20 Q Lieutenant, was there ever a time that you and
21 Officer Collins kissed at Sullivan?

22 A Absolutely not.

23 Q Was there ever a time that you and Officer
24 Collins engaged in some sort of romantic embrace at Sullivan?

25 A No, no.

1 Q Or at any time?

2 A Never.

3 MS. CONNOR: No further questions at this time
4 for the witness, your Honor.

5 THE COURT: Thank you. Cross-examination.
6 Mr. Kinsey.

7 MR. KINSEY: Thank you, your Honor.

8 CROSS-EXAMINATION BY MR. KINSEY:

9 Q Morning. You prefer Lieutenant, Mr. Hoefling?

10 A Doesn't matter.

11 Q Going with our theme, I'll call you Lieutenant
12 if that's all right?

13 A Fine.

14 Q Thank you. Now let me try to understand, when
15 you were watch commander, you control the facility, isn't
16 that right?

17 A As a lieutenant?

18 Q Yes.

19 A Yes.

20 Q And as a watch commander, you're aware that
21 any conduct where an officer is threatened or harassed should
22 be reported to the watch commander?

23 A Immediately, yes.

24 Q In fact, a sergeant for instance would have
25 the obligation to report that?

1 A Yes.

2 Q And if an individual learned that a lieutenant
3 had said something overtly sexual to a CO, there's an
4 absolute requirement that that sergeant report it to the
5 superintendent, isn't that correct?

6 A Yes.

7 Q Okay. So all of these events, whether you
8 witness them or they were reported to you, you had an
9 affirmative obligation to report them to the superintendent?

10 A Yes.

11 Q And sir, you didn't do that?

12 A Most of the time I was asked not to.

13 Q Well, sir, you have an affirmative obligation
14 to do that, don't you?

15 A Yes, I do.

16 Q And who asked you not to do that?

17 A Um, Officer Collins.

18 Q Well, why as her supervisor would you not
19 report it even if she said I don't want to report it?

20 A Because not only was I her supervisor, I was a
21 friend and she asked me not to do something as a friend.

22 Q So if you have a friend, you're willing to
23 violate the directives of the Department of Correctional
24 Services, is that right? Well, let me put it this way.
25 Lieutenant, your friendship was more important than doing

1 what DOCS expected you to do?

2 A I did report stuff that happened with Officer
3 Collins to my area supervisor, to my supervisor at times,
4 yes.

5 Q But your obligation is to report that stuff
6 like that you told us about with Lieutenant Keenan directly
7 to the superintendent; that's DOCS directive, isn't it?

8 A Well, to my immediate supervisor would have
9 been watch commander at the time. I wasn't a watch commander
10 at the time, I was a sergeant.

11 Q So you -- it's your testimony that you had no
12 obligation to go to Walsh?

13 A Did I have --

14 Q Who was superintendent?

15 A My obligation was to report it to my area
16 supervisor, to my supervisor watch commander at the time,
17 which is what I did.

18 Q Did you put it in writing?

19 A No, I didn't, I wasn't asked to.

20 Q Well, were you trained as a lieutenant that
21 these things should be in writing?

22 A We're talking about two different things.
23 When I was a lieutenant, she wasn't working when I was a
24 lieutenant.

25 Q Okay. When you were a sergeant, weren't you

1 aware that these things had to be put in writing and sent up
2 the chain of command so they could be investigated?

3 A If I had firsthand knowledge or I had proof of
4 something, yes, I would of.

5 Q Well, did you see Lieutenant Keenan say
6 anything to her?

7 A No, I wasn't present.

8 Q Never?

9 A No. Just what he said to me.

10 Q And what he said to you should have been
11 reported directly to the superintendent, isn't that right? I
12 mean maybe an appropriate response is, "Go fuck yourself,"
13 but the obligation is to then report it?

14 A Yes.

15 Q And so for all you know, these complaints
16 never went any further up the chain of command, did they, you
17 don't know?

18 A Further from?

19 Q From the watch commander, they never went to
20 the superintendent?

21 A There was an occasion when I had told Officer
22 Collins that she needs to go talk to the superintendent
23 herself.

24 Q We're talking about you. You have any
25 knowledge about whether or not these went up the higher

1 command --

2 A I don't know. The ones I reported to my watch
3 commander, I don't know what happened with them.

4 Q Now, Lieutenant, this morning as you arrived,
5 you had quite an animated conversation with Ms. Collins and
6 have you remained good friends?

7 A She moved away, but, no, we don't -- I mean I
8 haven't really conversed with her for quite awhile.

9 Q When was the last time you conversed with her?

10 A Last week when she called me and asked me if I
11 would still testify -- two weeks ago.

12 Q I'm sorry?

13 A It was within the past few weeks, I'm not sure
14 of the exact date.

15 Q How long was that phone call?

16 A Ten minutes maybe.

17 Q Did you discuss your testimony?

18 A No.

19 Q Did you rehash what had happened?

20 A Her -- the lawyer had sent me a copy of my
21 deposition that I had given when I testified, I don't even
22 know when that was, maybe a year, two years ago.

23 Q Prior to two weeks ago when was the last time
24 you talked to Ms. Collins, or her family?

25 A Well, I see her family from time to time

1 because they still live where I live.

2 Q That would be her extended family?

3 A Extended?

4 Q I'm talking about her husband, immediate
5 family.

6 A They don't live in the area anymore, they
7 moved down south.

8 Q When did they move?

9 A I don't know the exact date, haven't kept in
10 touch with her since she left.

11 Q Since she left the area or left Sullivan?

12 A Kind of lost touch after she left Sullivan, I
13 mean we kept in contact once in a while but, you know, we
14 went our separate ways.

15 Q Were you aware of her allegations against the
16 Department of Correctional Services?

17 A Yes.

18 Q Did you discuss those with her?

19 A She called me at times and told me things that
20 were going on in her life, but I mean, nothing ... I don't
21 know what you're asking me.

22 Q I'm asking if she called and talked to you
23 about this case.

24 A That it was going forward and that she wanted
25 me to testify. I did my deposition, I really kind of lost

1 track with her after that.

2 Q Did she discuss the allegations of this case
3 with you prior to your deposition?

4 A I had known what was going on in her life, I
5 mean she had told me stuff that had happened to her up in
6 Auburn, I mean I don't know ... I mean I couldn't give you
7 specific times when she called and told me what was going on.

8 Q Now, you don't have to give me the address but
9 what town do you reside in?

10 A Fallsburg.

11 Q And how far is that from Sullivan?

12 A Within 7 miles.

13 Q And at the time when Ms. Collins was at
14 Sullivan, do you know where she lived?

15 A She had stayed in her mother's house and she
16 had also stayed at my house from time to time when she was
17 working doubles.

18 Q I'm sorry, forgive me for interrupting, where
19 was her mother's house?

20 A Mother's house was the opposite side of
21 Sullivan, about 3 miles the other way.

22 Q So her commute at that point was?

23 A Minimal.

24 Q Minimal, 3 miles?

25 A Yes.

1 Q No stop signs?

2 A Stop light, couple stop signs, yeah.

3 Q So for you to give her a ride was not a
4 problem because you were within 10 miles of each other?

5 A Yes.

6 Q Did you go to high school with Ms. Collins?

7 A No.

8 Q Now, you indicated that your -- that your job
9 as a sergeant was relief bid?

10 A Yes.

11 Q Now when you say bid, that means seniority is
12 what constitutes getting a job?

13 A Yes, you bid on a job and you're awarded the
14 job by seniority, yes.

15 Q That's a union thing?

16 A Yes.

17 Q Okay. Now, when Ms. Collins arrived, she was
18 a resource officer, is that right?

19 A Yes.

20 Q Do you know how much time she had in DOCS?

21 A Couple of months, maybe.

22 Q Okay. And in your experience where does a new
23 officer with a couple months service usually get assigned in
24 the facility?

25 A Usually on the blocks, I mean they could get,

1 wherever you got, wherever you have a necessity, wherever
2 there's a hole in the charts is where they get put.

3 Q Now, you've been a chart sergeant, is that
4 considered -- working in charts, is that considered a good
5 job?

6 A Depends on who you ask.

7 Q I'm asking you, is it a good job?

8 A I don't think so.

9 Q Why is that?

10 A Because you get ridiculed by the rest, by
11 other officers in the facility.

12 Q Why do you get ridiculed as a chart sergeant?

13 A As a chart sergeant, chart officer?

14 Q Or chart officer, whatever.

15 A Because you're working up front with the
16 supervisors.

17 Q And why would that cause people to ridicule
18 you?

19 A Because you're not working down back with
20 inmates.

21 Q And down back with inmates is not a nice
22 place, is it?

23 A There's really not a nice place in the
24 facility, no.

25 Q And so if you have someone that you've known

1 for quite awhile who is a new correction officer and when you
2 get to assign, you assign her to the chart office, that would
3 engender jealousy, wouldn't it?

4 MS. CONNOR: Objection, he's calling for
5 speculation.

6 THE COURT: No, if he knows, it's all right.
7 He's given a lot of opinions both for you and throughout, so
8 we're going to let him continue at this point.

9 A Ask the question again.

10 Q Yes. If the new person came there, and they
11 were friends of yours and when you were on your relief as the
12 chart sergeant and you let them work in the chart office,
13 that would create jealousy among the officers?

14 A Depends on who you asked, whether it --

15 Q Well, the ridicule that you talk about, would
16 you expect that if you had a new officer with almost zero
17 time and she was getting this plum job --

18 A They would be ridiculed, not me.

19 Q Okay. So the person would be ridiculed?

20 A Yes.

21 Q The person that you assigned there. So it
22 would not surprise you that Ms. Collins was ridiculed because
23 she got this plum job from you?

24 A I didn't do the assignment.

25 Q You were in the chart office with her, right?

1 A Yes, the assignments are made the day before.

2 Q I see. Can you reassign her as a chart
3 sergeant?

4 A Yes I can.

5 Q You can send her anywhere?

6 A Needs of the facility, yes.

7 Q You didn't?

8 A I had nobody else to work the job that was
9 familiar with the way the job worked. I didn't train her,
10 somebody else did, I knew she knew how to do the job and
11 there was nobody else that I could use.

12 Q Do you recall in your deposition testimony you
13 were asked about giving her special training, that you
14 thought it would be good if she knew more about more things,
15 it would help her career?

16 A That's for any officer that's coming in that's
17 new, I would do that for anybody.

18 Q Do you do that for each and every officer?

19 A Absolutely, as much as I can, I still do it as
20 lieutenant.

21 Q Male or female?

22 A Male or female, doesn't matter.

23 Q Do you expect them to get ridiculed if they
24 get special treatment?

25 A No, I don't.

1 Q Does it happen?

2 A I don't think some jobs are special treatment,
3 some jails you can work in the tower and consider it's a
4 great job; in my facility, nobody wants to work it.

5 Q Okay. And what about down back, do people
6 like working down in the blocks?

7 A Some guys do, they enjoy it, they know what
8 they're doing every day, doing the same job.

9 Q How about new people who are resource
10 officers, do they like working down back?

11 A Some do, some don't.

12 Q It's a tough place, isn't it?

13 A Yes, sometimes, yes.

14 Q Now when you heard these rumors that you and
15 Ms. Collins were sleeping together, what did you do?

16 A I try not to pay attention to them. What are
17 you supposed to do? I mean you try denying allegations and
18 rumors in jail, they just get bigger and bigger, they just --
19 let it roll off your back, just -- I been doing this a long
20 time.

21 Q Did you tell her to let it roll off her back?

22 A They're gonna talk, people are gonna talk.

23 Q Did you tell her that?

24 A Yes, I did.

25 Q And what was her response?

1 A She didn't feel that she should be ridiculed
2 just because she's friends with me, she didn't think she
3 should have to put up with that.

4 Q So she identified the ridicule was because you
5 were friends, not particularly because she was a female,
6 right?

7 A Well, rumors were that we were sleeping
8 together so that -- I mean, that's a male/female thing.

9 Q Okay. You indicated that at Bedford Hills
10 which is a female facility there are rumors about the male
11 officers?

12 A Yes.

13 Q So these rumors are sort of equal opportunity,
14 males get blamed for sleeping with people and the females as
15 well, right?

16 MS. CONNOR: Objection, it calls for
17 speculation.

18 THE COURT: No, overruled.

19 MS. CONNOR: Which -- object.

20 THE COURT: Overruled. Go ahead.

21 A Yes.

22 Q Now, as far as you are aware, are you the
23 source of the information when Ms. Collins found out about
24 Lieutenant Keenan's comment; did she hear it from anyone
25 else?

1 A Which comment?

2 Q That I'm not sleeping with her so you must be,
3 did he say that to her?

4 A No, he said it to me.

5 Q So how would Ms. Collins find out about that
6 comment --

7 A I told her.

8 Q -- if you know?

9 A I told her.

10 Q Why would you tell her that?

11 A Because I thought it was kind of crummy.

12 Q Why wouldn't you tell the superintendent but
13 you'd tell an officer?

14 A Because she was my friend.

15 Q Now was your comment back to him appropriate
16 to a supervisor?

17 A No, it wasn't. I don't think his comment to
18 me was appropriate, either.

19 Q Okay. So one inappropriate comment deserves
20 another?

21 A No, it doesn't. Just that's what came out of
22 my mouth at the time when he said it to me, just caught me
23 off guard, I didn't expect it.

24 Q Did you report that conversation to higher
25 authority?

1 A No.

2 Q Now, these hangup calls that you were talking
3 about, hangup calls to the tower?

4 A Yes.

5 Q In your experience, are there times in the
6 facility when there are hangup calls, generally hangup calls?

7 A It doesn't happen very often, no.

8 Q You're familiar with walking calls, the shirts
9 up front are walking?

10 A Our facility used the radio.

11 Q Okay. Are there radio calls where you simply
12 click when somebody's going to walk?

13 A Yeah, they'll make a comment over the radio,
14 how do you read, and they know the supervisor's walking.

15 Q Now you indicated that she couldn't perform
16 her duties in the tower answering the phone; could you tell
17 me why that's so?

18 A We only had one tower in Sullivan, it's in the
19 center of the jail, oversees all of the rooftops and also the
20 yards, when there's inmates out. The officer's supposed to
21 be aware of what's going on at all time in the yards and also
22 what's going on in the rest of the facility. That's the only
23 high point in the jail that can see every place.

24 Q So if a problem starts in the jail, you want
25 the tower to know about it?

1 A They're the ones that supposed to know about
2 it before us if there's something going on, yes, especially
3 in the yards.

4 Q And would you agree as a sergeant and now a
5 lieutenant that if an individual quit answering the phone, it
6 would be dangerous in the facility?

7 A Yeah, you have to answer the phones,
8 absolutely.

9 Q Because it could be -- someone could be in
10 trouble, right?

11 A Yes. Well, somebody trying to get ahold of
12 you for whatever reason, yes.

13 Q Now, what about an officer who simply quits
14 answering their radio, is that dangerous?

15 A Yeah, we'd start looking for the officer if
16 they stopped answering their radio.

17 Q Why would you start looking for them?

18 A Because it's a jail and stuff happens.

19 Q Do you -- are you aware of a -- of a CO by the
20 name of Donna Payon (phonetic)?

21 A Green Haven, yes, I know the story of Donna
22 Payon, yes.

23 Q Were you in DOCS during that time?

24 A No, but I -- I know who she was and who the
25 perpetrator was, Smith, yes.

1 Q It shook DOCS to its core, didn't it?

2 A Yes, it did.

3 Q And wasn't --

4 MS. CONNOR: Objection, your Honor, this is
5 beyond the scope of direct, way beyond, we're talking about
6 something at Green Haven.

7 THE COURT: You are, Counsel.

8 MR. KINSEY: I'm getting back to the
9 telephones if I can, if you'll indulge me with two questions.

10 THE COURT: Give you two.

11 Q Are you aware that Ms. Payon was lured to a
12 place within the facility by a telephone call from within the
13 facility?

14 MS. CONNOR: Objection, your Honor, what's the
15 relevance? This is something that occurred remote in time,
16 at a different facility.

17 THE COURT: Well, the relevance is he's
18 getting back to the hangup calls and the importance of the
19 phone calls. Go ahead, Counsel.

20 Q Do you recall that?

21 A Yes.

22 Q And part of the problem in that was a delay
23 because she didn't answer her radio, do you recall that?

24 A I don't remember the actual specifics, I know
25 what happened.

1 Q Fair enough. So the mentality within the
2 facility is if that radio's not being answered and the
3 phone's not being answered, there's a problem?

4 A It would indicate there might be a problem,
5 yes.

6 Q Can you tell me, Lieutenant, you're on watch
7 command and someone doesn't answer their radio, what's the
8 first thing you would do?

9 A I would send somebody to check it out.

10 Q And that would be someone who would be taken
11 from somewhere?

12 A I would probably have the supervisor go and
13 find out what was going on, yes.

14 Q And if that happened repeatedly, what steps
15 would you take?

16 A If the phone --

17 Q If someone doesn't answer their radio
18 repeatedly, same person, what action should be taken?

19 A I would have the officer moved to -- brought
20 up front and ask what's going on. I mean I would have the
21 supervisor -- as a lieutenant I'd have the supervisor find
22 out what was going on, have the officer relieved and try to
23 find out what was going on.

24 Q Now at your jail in the arsenal, does the
25 phone have an identifier routinely in the arsenal?

1 A I don't -- no, it doesn't, no.

2 Q Now, tell me -- I'm sorry, I was writing like
3 crazy and I don't write very well, it looks like a
4 prescription, what is PMS?

5 A Prisoner movement service.

6 Q And what is that?

7 A They're trained in making all the moves within
8 the facility from cell to cell, trips going out, all the
9 paperwork has to be done for -- you know, itineraries have to
10 be set up, most of it's just internal moves. On afternoons
11 we have guys that move from blocks, you know, we have --
12 Sullivan has a big mental health element to the inmates so
13 they're constantly moving from mental health to different
14 blocks. So we move inmates around quite a bit.

15 Q And Officer Collins worked as a PMS officer?

16 A She had been trained previous, I don't know
17 who gave her the training but she had previous training.

18 Q Previous to what?

19 A To the night that I asked her to come, have
20 her come down and work it because I had nobody else in there.

21 Q Did you ask her where she'd received her
22 training?

23 A We usually have a list of people who have been
24 trained in certain jobs, whether it's arsenal or, arsenal
25 tour job, PMS, there's certain jobs, the central control

1 which operates all the doors in the jail, there's certain
2 jobs that you get very specific training for because it's
3 more entailed than other jails -- other jobs.

4 Q Did you ever ask her where she got the
5 training?

6 A No, her name was on the list.

7 Q And do you know who put her name on the list?

8 A One, the regular chart sergeant which would
9 have been I think Terry Bennett.

10 Q Was that the same sergeant that there were
11 rumors about as well?

12 A Yes.

13 Q And would this be a case where a new CO was
14 being given a really good administrative job instead of being
15 down back on the blocks?

16 A You asking me about -- our specific jail, the
17 PMS job is not considered a good job, most guys don't want
18 it.

19 Q Why is that?

20 A Because they have to actually work, you have
21 to do computer work and you gotta -- you're working for the
22 night.

23 Q But they don't have to be around inmates, do
24 they?

25 A Some would rather be around inmates.

1 Q But in PMS you don't have to be around
2 inmates?

3 A No, not specifically, no.

4 Q It's an administrative job?

5 A Yeah.

6 Q Now when you -- you saw this sign, "Johnny's
7 Love Shack," what was your first thought?

8 A Some idiot hung them up.

9 Q Well, what did you think their motivation
10 might be?

11 A Sometimes it's just high school stuff, I mean
12 I don't know how to explain it. I mean guys are bored.

13 Q So you didn't -- you didn't take any special
14 meaning to it?

15 A Well, I knew what it was about, I knew it was
16 there because Officer Collins was working in the chart office
17 and it was meant to be derogatory to her.

18 Q Well, how about you?

19 A I ... I been doing this awhile, it -- it
20 really doesn't affect me anymore, I don't bother with rumors,
21 you can't effectively do your job.

22 Q So if you obsess about all these rumors,
23 you're worthless inside, isn't that right?

24 A I don't know about being worthless, but yeah,
25 you can obsess over it, I mean --

1 Q You have to go on?

2 A You have to go on.

3 Q Now you indicated that you were really angry
4 about this, in direct testimony, you recall that?

5 A Because the guy, the officer who I believe did
6 it, and I don't know for a fact he did do it, he likes to
7 stir the pot, so yeah, I was a little bit ticked off because
8 he was told to stop.

9 Q When was he told to stop?

10 A When Officer Collins had brought to me the
11 comments that he was doing his farting around the facility
12 when she was around, told him to stop.

13 Q So I mean, farting in front of her is not
14 terribly sexual, is it?

15 A No, but doing it when there's inmates around,
16 that's an issue.

17 Q Well, it's a security issue?

18 A Yes.

19 Q But is it a sexual issue?

20 A I don't believe it's a sexual issue, no.

21 Q And he did it around inmates so clearly it
22 wasn't meant just for women, right, don't have any women
23 inmates?

24 A Well, according to --

25 MS. CONNOR: Objection, this calls for

1 speculation on the part of what was intended by somebody when
2 the witness wasn't even there.

3 MR. KINSEY: I'll withdraw the question.

4 THE COURT: Sustained.

5 Q So you had warned him?

6 A I told him to knock it off.

7 Q Did you write him up?

8 A No.

9 Q Did you send it to the superintendent?

10 A I wasn't there when it happened, but he didn't
11 deny it and I told him to stop.

12 Q Did you write it up and send it up the chain
13 of command?

14 A No, I didn't think it warranted it.

15 Q Why didn't it warrant it?

16 A Because I wasn't there, I couldn't prove that
17 he was doing it.

18 Q Did he deny doing it?

19 A No, but he didn't admit to it, either.

20 Q Should there have been an investigation of it?

21 A For that? No.

22 Q Should there have been an investigation of the
23 love shack sign?

24 A I don't know if there was or not. I don't
25 know what happened after I turned him over to the watch

1 commander.

2 Q Did you put anything in writing?

3 A I don't believe I did, and I wasn't asked to,
4 I mean I would have if I was asked to, I don't know what the
5 lieutenant did with them. I got to assume he did what he was
6 supposed to, he was a really good lieutenant.

7 Q Was he disciplined?

8 A Was who disciplined?

9 Q Mr. Royce, I'm sorry.

10 A I couldn't prove -- nobody could prove who did
11 it, I don't know who did it. I said he was the one I thought
12 did it.

13 Q Did you go to him and talk to him about it?

14 A That night I had told him stop, that he
15 crossed a line, that he needs to --

16 Q Yeah.

17 A I did say that already.

18 Q Now, what does it mean, you crossed the line?

19 A He was inappropriate, and it was meant that I
20 couldn't prove that he did it but if he did do it, it was
21 wrong, he shouldn't have done it.

22 Q What should have happened to him if you could
23 prove that he did it?

24 A Whatever the department would deem necessary,
25 would deem fit. I don't know, it wouldn't be up to me.

1 Q You're the watch commander now as a
2 lieutenant, what would you do if you got a person who walked
3 in, handed you "Johnny's Love Shack" and said it's him?

4 A What would I do?

5 Q Yes.

6 A I would go to the superintendent with it.

7 Q Do you know if that happened?

8 A With this, I don't know that.

9 Q Did you follow up?

10 A No, I didn't.

11 Q Has Ms. Collins ever asked you to follow up?

12 A Not that I can recall.

13 Q Did Ms. Collins ever follow up and tell you
14 that she had followed up?

15 A Not that I recall.

16 Q Now you indicated on direct testimony that
17 rumors are usually derogatory. What do you mean by that if I
18 can ask?

19 A What the nature of them are or -- I don't know
20 what you're asking me.

21 Q Well, you said that the rumors are usually
22 derogatory in nature, and then the questioning moved on. I'm
23 asking you, what does that mean to you, derogatory?

24 A Who's screwing around with who, who's doing
25 what with who, it's -- I mean it's just the problem, not the

1 problem with corrections but there's a lot of down time,
2 you're sitting around waiting for stuff to happen, there's an
3 awful lot of down time. People are bored, what they don't
4 know, they make up.

5 Q You indicated that was corrections wide. That
6 was generally true in corrections, is that right?

7 A Yes. To my experience, it's generally true.

8 Q Okay. And let's go over what your experience
9 is. What facility did you hear these kinds of rumors in,
10 Bedford Hills, you were there?

11 A Yeah.

12 Q Heard them there?

13 A Yes, I did.

14 Q But that was in reference to men, right?

15 A And female, and women, there was men and
16 women.

17 Q There would have to be two but the men were
18 the officers, right?

19 A Yes, but there was also rumors about females
20 and females too, rumors were rampant down there and you're
21 new down there so everybody wants to give you all the gossip.

22 Q Dish the dirt?

23 A Dish the dirt.

24 Q And then you go from there to Sullivan?

25 A Yes.

1 Q And you stayed almost your entire career at
2 Sullivan, right?

3 A No, most of my career was at Shawagunk as an
4 officer, I was there 15 years.

5 Q At Shawagunk?

6 A Yes.

7 Q Were there rumors in Shawagunk?

8 A Yes.

9 Q Now when you started back in, I'm sorry, I
10 lost --

11 A '86.

12 Q Huh?

13 A '86.

14 Q Back in '86, how many female officers were in
15 your class? Approximation is okay, I won't hold you.

16 A Four maybe.

17 Q And when you got to Shawagunk, how many female
18 officers were there?

19 A Maybe 10.

20 Q And how many officers at Shawagunk?

21 A There were 250 -- 275 I think at the time.

22 Q And is it fair to say there were not a lot of
23 women in the Department of Corrections when you entered?

24 A Yes.

25 Q When you got to Sullivan, how many females

1 were at Sullivan, approximately?

2 A Ten, fifteen, I'm not sure.

3 Q Out of how many officers?

4 A I think it was three and a quarter with the
5 annex.

6 Q So three and a quarter, 10 female officers,
7 right?

8 A Maybe 15, yeah, I'm not sure.

9 Q And rumors swirled about women and their
10 relationships with COs?

11 A Pretty much, COs, officers, sergeants, I mean
12 just ...

13 Q Now when you heard these, did you file any
14 report with the watch commander, the superintendent saying
15 this is inappropriate and has to stop?

16 A No.

17 Q Well, you had been trained as a sergeant to
18 know that there was a zero tolerance policy in DOCS with
19 regard to sexual harassment, you aware of that?

20 A Yes.

21 Q And wouldn't you say if these rumors were
22 constantly swirling at Sullivan, that that was unacceptable
23 and DOCS needed to intervene?

24 A How do you prove a rumor? I mean what do you
25 do with it? I mean you propagate the rumor by spreading it

1 or you just let it lie. I mean, it's a rumor.

2 Q What if you write it and you send it up the
3 chain of command; couldn't they come do something?

4 A What are you gonna do, people gonna deny that
5 they said it or it was true, what do you do with a rumor?
6 You can't prove a rumor, something somebody's saying you're
7 not witnessing --

8 Q That is, as a supervisor, be virtually
9 impossible for you to do anything?

10 A Unless you have firsthand knowledge, no, I
11 mean, yeah, kind of, unless you're there and somebody does it
12 in front of you, unless you got firsthand proof, yeah,
13 it's --

14 Q And if you investigated one of these incidents
15 and you couldn't find any proof, what would your conclusion
16 be?

17 A That it was a rumor that didn't happen.

18 Q Now, would you call Sullivan a female friendly
19 facility?

20 A It's okay, I mean --

21 Q All these rumors, it's still okay?

22 A It's all right, it's not a bad place to work.

23 Q Do women feel the same way, if you know?

24 A I'm not a woman.

25 MS. CONNOR: Objection, he's calling for

1 speculation.

2 THE COURT: He asked him if he knew, and
3 I'll -- he answered, says he doesn't know, so we'll move on.

4 Q Now you indicated that you knew that Auburn
5 was a terrible place for women to go, is that right, it's not
6 female friendly?

7 A I didn't say it was a terrible place to work,
8 I don't have any firsthand knowledge but I was told it's not
9 a female friendly place.

10 Q Would that be a rumor, that it was not a
11 female friendly place?

12 A That would be a rumor, yes.

13 Q Had you ever been to Auburn?

14 A No.

15 Q Did you ever talk to Superintendent Burge?

16 A No, I didn't.

17 Q Did you ever talk to anyone in supervision at
18 Auburn, during the Penny Collins time?

19 A No.

20 Q Did you ever meet Superintendent Graham?

21 A No, I didn't.

22 Q Other than this rumor, did you have any
23 knowledge that Auburn was any different with regard to rumors
24 than Sullivan?

25 A No.

1 Q So for all you knew, it was the same?

2 A It was the same, yes.

3 Q Are you familiar with a CO Sheila Ebert?

4 MS. CONNOR: Objection, this is beyond the
5 scope of direct.

6 MR. KINSEY: She raised --

7 THE COURT: No, it's overruled, go ahead.

8 A Yes.

9 Q And how do you know her?

10 A She worked at Sullivan.

11 Q How long did she work there?

12 A I don't know, she was there maybe a year, I'm
13 not sure.

14 Q Was she there when Ms. Collins was there?

15 A Yes.

16 Q Did you come to understand that she was the
17 person spreading the rumor about the embrace?

18 A I was told that she was the one that was,
19 yeah, made allegations, starting rumor that she walked in on
20 Officer Collins and myself, yes.

21 Q Did you ever talk to her about that?

22 A No.

23 Q Did you ever confront her?

24 A Nope.

25 Q Did you ever write her up?

1 A No.

2 Q Did you ever send a report to the watch
3 commander?

4 A (Witness gesturing negatively.)

5 Q I mean that's quite an allegation, isn't it,
6 that she walked in on the two of you in an embrace in a room
7 that was cut off from the rest of the facility; I mean why
8 didn't you write her up?

9 A She never said it to me, I have no idea that
10 it was absolutely true that she was the one that said it was
11 rumors.

12 Q Did you ever ask her if it was true?

13 A No.

14 Q Were you interested if what -- that she was
15 the one saying this?

16 A No, I didn't care. It didn't happen. Why am
17 I gonna just put any credence to it? That's like trying to
18 defend something that didn't happen.

19 Q Now if that -- was that close in time to the
20 "Johnny's Love Shack"?

21 A I don't remember when, when the allegations
22 were made, when she started the rumor, I don't know.

23 Q But you don't know if she started --

24 A I was told she was, that she was the one that
25 said it.

1 Q Who told you?

2 A Officers.

3 Q Can't name them. Can you name them?

4 A No.

5 MR. KINSEY: May I have a moment, your Honor.

6 THE COURT: You may.

7 Q Sergeant, in your prior -- in your prior
8 testimony, did you describe Officer Collins as soft spoken
9 and emotional?

10 THE COURT: Lieutenant.

11 MR. KINSEY: I'm sorry. I can't keep it all
12 straight.

13 THE COURT: I understand.

14 Q Did you describe Officer Collins as soft
15 spoken and emotional?

16 A Yes.

17 Q Is that a fair assessment?

18 A Yes.

19 Q Do you recall indicating that in DOCS, that's
20 viewed as weakness?

21 A Yes.

22 Q Now the best of your knowledge, was
23 Ms. Collins ever extorted or manipulated by an inmate?

24 A No.

25 Q She ever report that to you?

1 A No.

2 Q None of these problems then created problems
3 for her as far as you know, none of these rumors harmed her
4 ability to function in any way?

5 A Just the incidents that I'm aware of when she
6 was working at Sullivan with the phone calls and --

7 Q Except for the tower incident?

8 A Tower, yes.

9 Q Did any of these rumors affect her ability to
10 interact with inmates that you're aware of?

11 A Not that I know of.

12 Q She ever assaulted?

13 A No.

14 Q Ever have anything thrown on her?

15 A Not that I know of.

16 Q While she was at Sullivan, was she ever in a
17 fight?

18 A I don't believe so.

19 Q While she was at Sullivan did she have
20 anything thrown on her?

21 A No.

22 Q While she was at Sullivan, did she conduct --
23 if you know, did she conduct frisks?

24 A I believe she did, she would have to.

25 Q That would be part of her job?

1 A Yes.

2 Q And there was no indication that that had been
3 a problem, was there, that her duties were somehow affected
4 by rumors?

5 A Not that I know of.

6 Q Now, you were also asked I believe about
7 condoms in her lunchbox. Did -- was there an allegation that
8 Lieutenant Keenan put condoms in her lunch box, do you recall
9 that?

10 A I vaguely remember it, I don't remember who
11 did it, or when it was done.

12 Q Well, do you remember if Lieutenant Keenan was
13 identified?

14 A I don't remember.

15 Q Did you do a memo that he had done this?

16 A Did I do a memo that Keenan had done what?

17 Q Placed condoms in a lunchbox. Did you make
18 any report?

19 A I don't remember.

20 Q You don't even remember being involved in
21 that, do you?

22 A No, I don't.

23 Q Now, there came a time when Ms. Collins called
24 you at home and complained that people were beating on her
25 walls, do you recall that?

1 A Yes.

2 Q Was that before or after she left Sullivan?

3 A I believe it was after.

4 Q And that was at her home, wasn't it?

5 A Yes.

6 Q And that --

7 MS. CONNOR: Your Honor, object that this is
8 beyond the scope, way beyond the scope of direct.

9 MR. KINSEY: Deals with the relationship, your
10 Honor.

11 THE COURT: Come on up here for a minute.

12 (AT Side Bar.)

13 THE COURT: Okay. The objection is beyond the
14 scope of direct examination. Mr. Kinsey.

15 MR. KINSEY: Yes, your Honor, the part of the
16 scenario here is that there was a special relationship
17 between Ms. Collins and the witness, and that that
18 relationship extended not just to his responsibilities as a
19 supervisor, but also a personal relationship.

20 THE COURT: As a friend.

21 MR. KINSEY: Those would have been the source
22 of many of the rumors and comments and that, if that
23 relationship persisted after she left Sullivan, then that
24 relationship becomes important as to how it's being perceived
25 within DOCS.

1 THE COURT: I'm going to overrule the
2 objection, I'm going to allow you a little leeway but not a
3 lot.

4 MR. KINSEY: I'm wrapping it up.

5 THE COURT: Okay.

6 (Open Court.)

7 THE COURT: Go ahead, Mr. Kinsey.

8 MR. KINSEY: Thank you, your Honor. Can we
9 have the court reporter read back the question, I'm sorry.

10 (The last question was read.)

11 Q Did she indicate why she had called you
12 instead of someone else?

13 A Um, her husband works, worked as a pilot,
14 helicopter pilot, he was probably out on a flight and she was
15 looking to tell somebody.

16 Q If you know, was her husband living at that
17 same location, near Sullivan, at that time?

18 A Her home was up in Auburn, wasn't it? You're
19 asking me when she was up in Auburn is when it happened, not
20 when she was living --

21 Q Oh, she called you from Auburn, is that right?

22 A Yes. I believe it was when she was home at
23 Auburn, yes.

24 Q And if you know, did she call the police?

25 A I told her to call the police.

1 Q Do you know if she called the police?

2 A I don't know.

3 Q Did that have anything to do with DOCS as far
4 as you could see?

5 A I have no idea.

6 Q Are you aware of any time that a sergeant
7 called Auburn to warn them about Ms. Collins?

8 A Again, that was a rumor I heard, that there
9 was a sergeant that made a call up to Auburn saying that they
10 were getting Officer Collins.

11 Q Did you try to find that sergeant?

12 A No.

13 Q Did you write that sergeant up?

14 A No, because I wasn't -- I wasn't there, I
15 didn't hear the conversation, I didn't know about -- I wasn't
16 privy to the phone call, if it was made, I don't know.

17 Q You don't have any idea if it was ever made,
18 do you?

19 A Just a rumor.

20 Q Same question, you don't have any idea whether
21 or not a phone call was ever made?

22 A No.

23 MR. KINSEY: Thank you, your Honor.

24 THE COURT: Okay. Ms. Connor, any redirect?

25 MS. CONNOR: Yes, your Honor, just a moment,

1 please.

2 THE COURT: Oh, I'm sorry.

3 MR. ANDREWS: Just standing to say no
4 questions.

5 THE COURT: And I'm glad you did. Thank you,
6 Mr. Andrews, I apologize. I didn't figure you would. We're
7 going to endeavor to finish this witness before we break for
8 lunch, so I can feel like we accomplished something this
9 morning. We got a witness on and off the stand, all in the
10 same time before we break, okay. So if you'll hang in there
11 with me, please.

12 REDIRECT EXAMINATION BY MS. CONNOR:

13 Q Lieutenant, I have a few questions to follow
14 up on some of the areas that you were asked about on
15 cross-examination. Are you familiar with the office of
16 diversity management in Department of Corrections?

17 A Yes.

18 Q And did there come a time that you were
19 requested to speak to the office of diversity management
20 concerning Penny Collins?

21 A Yes.

22 Q And did you cooperate in that investigation?

23 A Yes.

24 Q And did you provide a statement to the office?

25 MR. KINSEY: Your Honor, I'm going to object

1 and move to strike. We didn't -- did not talk about the
2 office of diversity management.

3 THE COURT: That's right, we didn't. It's
4 outside the scope of the cross-exam.

5 MS. CONNOR: May I, may we approach, your
6 Honor.

7 THE COURT: Yes, you may.

8 (At Side Bar.)

9 THE COURT: Okay. We have everybody,
10 Ms. Connor, go ahead.

11 MS. CONNOR: Yes, your Honor. The purpose of
12 this line of questioning is that counsel on cross asked
13 repeatedly about who he reported various incidents to and
14 didn't report various incidents to. The point of this line
15 of questioning is that he reported it to the office of
16 diversity management, participated fully in that
17 investigation, answered all questions, and reported incidents
18 to that office, which is part of the Department of
19 Corrections.

20 MR. KINSEY: That wasn't the question. The
21 question was not did he report to the office of diversity
22 management, it was did they start an investigation, and did
23 he fill out a statement. If he reported it is a fair
24 question, beyond that, we're in a whole new country.

25 THE COURT: I don't disagree. So why don't

1 you go right to the heart of it so to speak, ask him, did you
2 do reports, did you cooperate, you know.

3 MR. KINSEY: More specifically I'd like to
4 know if he initiated.

5 MS. CONNOR: Well, he's --

6 THE COURT: Well, you can recross. Okay.

7 MR. KINSEY: Okay.

8 THE COURT: All right.

9 MS. CONNOR: Thank you.

10 (Open Court.)

11 THE COURT: Go ahead, Ms. Connor.

12 Q Lieutenant, did you make any reports of the
13 harassment that Officer Collins reported to you to the office
14 of diversity management?

15 A I believe I did, yes.

16 Q And did you do a statement to that office of
17 diversity management?

18 A Yes, an investigator come down, yes.

19 Q Was that in the form of a written statement?

20 A Yes, that he wrote up and I signed, yes.

21 Q Now when you say he wrote up, how did he come
22 about to write that up?

23 A Well, during their interview process they ask
24 questions and write down the questions and also my answers.

25 Q And is that what you signed?

1 A Yes.

2 Q Now, if you -- are you familiar with the term
3 rat, in corrections?

4 A Yes.

5 Q What is a rat?

6 MR. KINSEY: Objection, your Honor. Beyond
7 the scope.

8 THE COURT: Sustained.

9 Q Now on cross-examination, you were asked
10 several questions about whether or not you made reports
11 concerning certain incidents. Why did you not report the
12 incidents you did not report, Lieutenant?

13 A Officer Collins asked me not to, on a few
14 occasions.

15 Q Did she say why she didn't want you to report?

16 A She didn't want to be considered that she was
17 telling on fellow officers.

18 Q Would that have been a problem for her at
19 Sullivan if she was perceived that way?

20 A Yes, it would.

21 MR. KINSEY: Objection, your Honor, calls for
22 a conclusion.

23 THE COURT: Well, it does, but he's given lots
24 of them this morning, based on his experience. I'll let the
25 answer stand. Go ahead.

1 Q Why would that have been a problem for Officer
2 Collins at Sullivan?

3 A Because officers don't like working with other
4 people that tell on other officers.

5 Q Why would that be a problem for the officer
6 who told --

7 A It becomes a lack of trust.

8 Q Why is that a problem?

9 A In a correctional facility?

10 Q Yes.

11 A Want to make sure people are there if
12 something's going on.

13 Q That's very important to an officer in a
14 correctional facility?

15 A To anybody in a correctional facility, yes.

16 Q That would include Officer Collins as well?

17 A Yes.

18 MS. CONNOR: I have no further questions of
19 the witness, thank you, your Honor.

20 THE COURT: Thank you, Ms. Connor. Any
21 recross?

22 RECROSS-EXAMINATION BY MR. KINSEY:

23 Q Did you begin the investigation with diversity
24 management over the incident that you were just questioned
25 about?

1 A I don't remember who initiated it.

2 Q Did you write to diversity management?

3 A No.

4 Q Did you call diversity management?

5 A No.

6 Q Did you institute an investigation by
7 diversity management, you?

8 A No, I did not.

9 Q So this was -- they came to you and said we
10 want a statement about this incident?

11 A Reported to them by -- I don't remember who it
12 was.

13 Q Not by you?

14 A No.

15 Q Now, you indicated that Ms. Collins asked you
16 not to report this, is that correct?

17 A Couple incidents, yes.

18 Q Were you aware that during that same period,
19 Officer Collins was still on probation?

20 A I don't remember if she was or not. I guess
21 she would have been, you're on probation for a year, the
22 first year you're on probation, yes.

23 Q Do first year officers lodge a lot of
24 complaints, as a general rule?

25 A No.

1 Q Why is that?

2 A They're still learning the system.

3 Q So an officer in the first year or two years,
4 would they have the experience to advise the superintendent
5 on how to run the facility?

6 MS. CONNOR: Objection, this is beyond the
7 scope of redirect.

8 THE COURT: Counsel.

9 MR. KINSEY: I'll rephrase, your Honor.

10 THE COURT: All right.

11 Q Would complaining about these incidents in
12 your experience in any way affect Officer Collins' ability to
13 transfer?

14 A Complaining about the incidents in Sullivan,
15 whether it would affect a transfer?

16 Q Yes.

17 A No.

18 Q The one she asked you not to talk about?

19 A No.

20 Q They would have no effect on her transfer,
21 would they?

22 A No.

23 Q And this idea of not wanting to work with
24 someone who made complaints, that has nothing to do with her
25 gender, does it?

1 A Not that specific, no.

2 Q So if a male was talking, making complaints
3 about a male officer, that lack of trust would begin to grow
4 with a male officer as well, wouldn't they?

5 A Yes.

6 Q That has nothing to do with her being a woman?

7 MS. CONNOR: Asked and answered, your Honor.

8 THE COURT: I'll overrule it. Go ahead, you
9 can answer.

10 A No.

11 MR. KINSEY: Thank you, your Honor.

12 MS. CONNOR: I have no further questions.

13 THE COURT: Mr. Andrews, you have any
14 questions?

15 MR. ANDREWS: No questions, your Honor.

16 THE COURT: Okay, good enough. Sir, you can
17 step down, thank you very much.

18 (Whereupon the witness was excused.)

19 THE COURT: Ladies and gentlemen, well, my
20 clock says 11:57, we didn't have to go over, and we finished
21 this witness, so I'm going to let you break for lunch now, an
22 hour, if you could be back in the jury room, 1:00, we're
23 going to try to start right at 1:00. Okay. Enjoy your
24 lunch. Please don't talk about it, don't let anybody
25 approach you, talk about it; if they do, I need to hear about

1 it. Thank you.

2 (Jury Excused, 11:58 a.m.)

3 THE COURT: Okay. Is there anything before we
4 break for lunch?

5 MS. CONNOR: Yes, your Honor. That -- I have,
6 my witness that I had scheduled for this afternoon is not
7 here, has not responded to the subpoena. So therefore, I
8 don't have -- she's not here.

9 THE COURT: Well, we need to go to the next
10 witness then.

11 MS. CONNOR: We have placed a phone call to
12 her with a message that she needs to come sooner. I,
13 she's -- it's the reader for Sue Carter's, Susan Carter's
14 testimony. After that, your Honor, I expect to have the
15 plaintiff's doctor. That doctor is scheduled for tomorrow
16 because I had the afternoon slotted for this witness. And
17 then I have my expert after that.

18 THE COURT: Can we -- well, I'm going to ask
19 you to try to get somebody here. I don't want to send this
20 jury home early, I don't want to waste time. So do your
21 best, we have drafted an order, or an order's been drafted
22 for me to sign for the marshals to go pick up Ms. Mayville,
23 if they can find her, we're going to do that. But I'm going
24 to ask you to do everything you can to get witnesses here so
25 we can continue. Okay.

1 MS. CONNOR: Your Honor, I just say right now,
2 Dr. Reagles is testifying in another matter out of town
3 today.

4 THE COURT: But I thought you had a medical
5 doctor.

6 MS. CONNOR: Yeah. I can call his office and
7 see, but, you know, I don't know how I'm going to get him
8 here earlier, your Honor. I will try my best.

9 THE COURT: Ms. Connor, I can appreciate the
10 problems, but, you know, you tell me the morning of, you have
11 a witness that you haven't talked to, you haven't, you know,
12 had any kind of contact with, the day she's supposed to show
13 up. That's a problem, because we have a jury here who's
14 waiting to hear this case, and has been very patient with us.
15 And again, I'm going to emphasize that that's not the way to
16 conduct business. You've got to have your witnesses here and
17 ready to go. I appreciate expert witnesses are more
18 difficult. Are you saying that you don't have any other
19 witnesses beyond these experts?

20 MS. CONNOR: I have one other witness in
21 Rochester, I will also call her and see if she can come to
22 the court this afternoon.

23 THE COURT: That would be great. Do what you
24 can, please.

25 MS. CONNOR: I am very sorry, your Honor. I

1 never -- I did not expect this witness not to show, because
2 she came to her deposition as well. And I did not expect her
3 not to show.

4 THE COURT: But she never communicated with
5 you, in all your attempts, you said you tried to contact her,
6 you never heard from her?

7 MS. CONNOR: That's correct, your Honor, but I
8 did not expect her not to show because people who know her
9 told me that they thought, it's no problem, she's going to
10 show.

11 THE COURT: All right. Well, do what you can,
12 please. And we're going to sign that order, so if you hear
13 back from her, please let the court know, let my courtroom
14 deputy know, whatever, okay.

15 MS. CONNOR: Yes, and I'm very sorry, your
16 Honor.

17 THE COURT: All right.

18 MR. ANDREWS: Your Honor, if I could briefly,
19 in terms of a reader coming in this afternoon, as I
20 understood it, pending demonstration of temporal proximity,
21 we would not be hearing about Mr. Mitchell from the reader,
22 pertaining to Ms. Carter's testimony. We haven't heard any,
23 and so I just want to confirm that that's where we stand.

24 THE COURT: Ms. Connor.

25 MS. CONNOR: May I have one moment, your

1 Honor, please.

2 THE COURT: Yes.

3 (Pause in Proceedings.)

4 MS. CONNOR: Your Honor, with respect to
5 Officer Carter, it's my understanding that her testimony
6 reflects that she was a resource officer, and a resource
7 officer goes all over the facility at any given time.
8 Therefore, I don't think there's sufficient grounds to
9 conclude that she did not have -- there was not temporal
10 proximity with respect to, at that time Sergeant Mitchell.
11 Her job was -- we've heard testimony about jobs of resource
12 officers in this hearing, in this trial, rather, and that
13 there's been a lot of testimony how they're sent here and
14 there, where they go everywhere and that was her testimony as
15 to what her job was.

16 THE COURT: I don't think that's the crux of
17 Mr. Andrews' argument. I don't want to speak for him so I'm
18 going to let him speak, but my understanding was there was a
19 timing issue as to when she was working, now Lieutenant
20 Mitchell was working. Go ahead, Mr. Andrews.

21 MR. ANDREWS: It has to do with where then
22 Sergeant Mitchell was working. I know he jumped around a
23 little bit but Ms. Carter testifies very clearly that it was
24 once or twice that she worked for him, that it was when she
25 worked in media south, and that those are the only times that

1 she heard him say anything inappropriate. And it's Sergeant
2 Mitchell who got a permanent assignment that carried him away
3 from that, ever getting assigned to that job, not long after
4 he arrived at Auburn.

5 THE COURT: And this was before Ms. Collins
6 was at Auburn?

7 MR. ANDREWS: Well, maybe two years, a year
8 and a half, two years.

9 THE COURT: Ms. Connor, unless there's
10 something -- Ms. Connor, unless there's something in the
11 testimony which demonstrates that the witness, now deceased,
12 had some contact with defendant Mitchell during the time
13 period in question of this lawsuit, I'm going to have to
14 sustain the objection. There needs to be something
15 indicating that during the time period of Ms. Collins' claim,
16 that there was contact. So that there's, you know, a basis
17 to make it relevant. I just don't think it's appropriate to
18 have testimony about things that occurred before Ms. Collins
19 was even in the facility, that's just not going to work.

20 MS. CONNOR: Your Honor.

21 THE COURT: Go ahead.

22 MS. CONNOR: I believe that even if there is
23 not evidence that, in Sue Carter's testimony that she worked
24 with then Sergeant Mitchell, that that would be admissible
25 under Rule 803(21), it's concerning his reputation, history

1 and character, and under that rule, I would request that the
2 testimony be admitted because it goes to his reputation in
3 the facility, and how he spoke in the facility.

4 THE COURT: Go ahead.

5 MR. ANDREWS: First of all, your Honor, once
6 or twice does not establish a reputation, having heard
7 something once or twice. Second of all, we haven't presented
8 any character testimony, so I don't see how they get to
9 present character testimony.

10 THE COURT: That's right, you don't.

11 MS. CONNOR: Well, your Honor --

12 THE COURT: And you still have the time period
13 issue. I mean his reputation during the time that she's
14 working there is relevant. His reputation two years before
15 she even shows up is not relevant, because she'd have no way
16 of knowing anything about his reputation at that point in
17 time, it's when she's there and he's there. And if
18 Ms. Carter had some testimony regarding that time period with
19 regard to this defendant, then absolutely I'm going to allow
20 it in. But you need to establish that that's what it is,
21 that she's talking about. Okay. Anything else?

22 MR. ANDREWS: Nothing, your Honor.

23 MR. KINSEY: Nothing, your Honor, thank you.

24 THE COURT: Ms. Connor?

25 MS. CONNOR: Thank you, your Honor.

1 THE COURT: All right.

2 THE CLERK: Court's in recess.

3 (Whereupon a luncheon recess was taken from
4 12:06 p.m. to 1:04 p.m.)

5 (Open Court, Jury Out.)

6 THE COURT: Okay, we're in session outside the
7 presence of the jury. Ms. Connor, were you able to locate a
8 witness so we can continue.

9 MS. CONNOR: Yes, I have two. First I have
10 the deposition testimony of Officer Susan Carter.

11 THE COURT: Okay.

12 MS. CONNOR: Then I plan on calling
13 Dr. Kenneth Reagles this afternoon.

14 THE COURT: Perfect, okay.

15 MS. CONNOR: And your Honor, before we go on
16 any further, your Honor, I'd like to ask you to reconsider
17 your ruling with respect to excluding certain deposition
18 testimony regarding Officer -- or withdrawn, Sergeant Troy
19 Mitchell. There is a portion of the transcript which counsel
20 for defendant Mitchell has asked to be read that links
21 conduct to Officer Collins and Ms. Carter. And I can cite
22 that and show it to your Honor, and I would ask that that,
23 minimally, that be read.

24 MR. ANDREWS: Your Honor.

25 THE COURT: I don't believe defense counsel's

1 asked for anything to be read.

2 MR. ANDREWS: I think I was clear in my letter
3 to the court that I filed that I only wanted to read anything
4 in if the parts were allowed as to defendant Mitchell. I
5 will be reading nothing into the record, your Honor.

6 MS. CONNOR: Your Honor, then you asked for
7 evidence that would make a link between the defendant and the
8 witness and defendant Mitchell, and the plaintiff, and there
9 is on page 59, and page 60, an exact connection. Based on
10 that I'd ask you to reconsider your ruling.

11 THE COURT: And what is that connection?

12 MS. CONNOR: "Question: Do you recall
13 anything else she said about the sergeants?" She is in
14 reference to the plaintiff.

15 "Answer: I think it had mostly to do with
16 Sergeant Mitchell.

17 "Question: Okay. Now you said that
18 Ms. Collins mentioned that he had a problem with foul
19 language?

20 "Answer: Yes, ma'am.

21 "Did you perceive that problem -- did you
22 perceive whether he had a problem with foul language?

23 "Answer: He had that straight across the
24 board, ma'am, whether you were male or female.

25 "Question: What type of language did he use

1 that was foul?

2 "Answer: Just that, just about every other
3 word out of his mouth had to do with sex, whether you wore
4 clothing or not.

5 "Question: Anything else?

6 "Answer: The size of a male organ.

7 "Question: Do you recall anything else?

8 "Answer: Well, it was a full eight hours of
9 it."

10 MR. ANDREWS: Your Honor, that does nothing to
11 establish the time period when they saw each other and the
12 fact is the transcript does establish that time period, and
13 that it was years before. And there's something I forgot to
14 mention this morning, which is that Officer Carter, Susan
15 Carter, when asked whether she had ever witnessed any
16 interaction between Mitchell and the plaintiff, said no, they
17 worked on a different shift.

18 MS. CONNOR: Your Honor, I'm not claiming that
19 this establishes that the witness did see an interaction
20 between defendant and the plaintiff; however, it establishes
21 the time frame that your Honor asked about.

22 THE COURT: Yeah, my concern is that the
23 passage that you've just read from would be double hearsay.
24 She's talking about what did Ms. Collins ever tell you, so I
25 wouldn't have allowed it anyway.

1 MS. CONNOR: Well, your Honor, but after that,
2 it says, what type of language did he use that was foul and
3 it's in reference to her, when she -- the time she spoke to
4 Ms. Collins, and then she describes the language.

5 THE COURT: Well, no, what type of language
6 did he use doesn't give me a time period.

7 MR. ANDREWS: Your Honor --

8 MS. CONNOR: But your Honor, if I may.

9 THE COURT: You may.

10 MS. CONNOR: But the problem that's asked
11 about is the problem that she talked about with Penny
12 Collins, therefore it's not for the truth of the matter in
13 terms of that hearsay, I understand, but it identifies the
14 problem and places it at a point in time.

15 MR. ANDREWS: Your Honor, there's no point in
16 time offered. To the extent it is something that came from
17 Ms. Collins to Ms. Carter, it is double hearsay.

18 THE COURT: Ms. Connor, I'm having difficulty
19 with this because there is no -- you're talking about double
20 hearsay and there's no clear establishment of when we're
21 talking about from Ms. Carter, the deposition witness.
22 There's a question that you've suggested is that they -- was
23 she, did Ms. Collins tell you of some problems, right, with
24 Mr. Mitchell and his language? Is that what you're --

25 MS. CONNOR: About the sergeants and then yes,

1 it was narrowed to defendant Mitchell.

2 THE COURT: Defendant Mitchell.

3 MR. ANDREWS: But the question, your Honor,
4 was did you perceive and it doesn't say did you perceive
5 based on your conversation with Ms. Collins, with
6 Ms. Collins, doesn't say did you perceive based on your own
7 experience, just said did you perceive.

8 MS. CONNOR: But the answer clearly indicates
9 her personal experience. "He had that straight across the
10 board, ma'am, whether you were male or female.

11 "What type of language did he use that was
12 foul?"

13 Then just that, and then she describes the
14 language. That's her experience, your Honor.

15 MR. ANDREWS: And your Honor, if it is her
16 experience, then it's out of time because we have her
17 elsewhere in the transcript saying the only time she heard
18 him say something offensive was those one or two times they
19 worked together in media south.

20 THE COURT: Which would have been before
21 plaintiff was in the facility.

22 MR. ANDREWS: Long before, your Honor.

23 MS. CONNOR: Your Honor, I don't think that it
24 establishes that's the only time she heard him say something
25 offensive. It established when he was her direct supervisor,

1 doesn't mean she didn't hear him at other times, Counsel
2 is --

3 THE COURT: Yeah, but we're guessing, we're
4 guessing. It doesn't mean she didn't, doesn't mean this,
5 doesn't mean that, there's nothing in that deposition that
6 clearly establishes that I've heard that what she's talking
7 about is a time period when Ms. Collins was present in the
8 facility.

9 Now there's been lots of testimony from
10 Ms. Collins about what her interactions with Mr. Mitchell
11 were, but I think it's inappropriate to allow this without --
12 you know, it may be clearly different if she was here, but to
13 just have this read without any parameters of time period and
14 when it was, I think is just unacceptable.

15 MR. ANDREWS: And if I could say, the
16 transcript really does establish that it was the one or two
17 times they worked together, it really does, and I'm happy to
18 read it to you, if you like.

19 THE COURT: Well, you can read it into the
20 record if you'd like for purposes of the record.

21 MR. ANDREWS: If it's necessary for your
22 ruling, that's fine, it's up to you, your Honor, I have no --

23 THE COURT: Well, why don't you put it in the
24 record.

25 MR. ANDREWS: Okay. So the question is on

1 page 97, "So approximately how many times total did you work
2 directly under Sergeant Mitchell at Auburn Correctional
3 Facility?

4 "Answer: Just about once or twice.

5 "Question: Did he ever direct any
6 inappropriate or offensive comments to you, state them
7 directly to you?

8 "Answer: As a part of conversations he was
9 carrying on, is that what you meant?

10 "Question: I'm interested in anything he
11 directed to you.

12 "Answer: He was not talking directly to me.

13 "Question: Did he make offensive comments to
14 a group of people that you were one?

15 "Answer: Yes.

16 "Question: And how often did that occur?

17 "Answer: The times that I worked with him."

18 THE COURT: Okay. Ms. Connor, do you have
19 anything further?

20 MS. CONNOR: No, your Honor.

21 THE COURT: Okay. My ruling's going to stand.
22 I don't think there's been sufficient foundation laid that
23 would make this deposition testimony admissible based on the
24 fact that we don't have a time period. The only time period
25 we're aware of is the time period that Sergeant Mitchell

1 worked with the deponent prior to Ms. Collins coming to the
2 facility. So that's my ruling.

3 MR. ANDREWS: Thank you, your Honor.

4 MS. SHEEHAN: Your Honor, may I just confirm
5 that regarding the Carter deposition, that the state, none of
6 the state defendants opposed sections reading, none of the
7 objections by plaintiff's counsel were sustained, correct?

8 THE COURT: I believe there was one sustained,
9 I'd have to get my notes.

10 MS. SHEEHAN: I have the text message.

11 MS. CONNOR: I have it here, your Honor.

12 THE COURT: Okay, Counsel, what's your
13 question?

14 MS. SHEEHAN: Were there any objections of
15 plaintiff to what I proposed, what state defendants proposed
16 to read in, were any of them sustained?

17 THE COURT: Well, she had objections to
18 defendants' designations to read portions of deposition
19 transcript of Susan Carter, 56:13 through 56:19, 57:4 through
20 57:13, and 68:10 through 68:13 are overruled and defendants
21 will be permitted to read those portions at trial and the
22 court reserve as to plaintiff's request to read pages 60 to
23 80, 68 -- or 60:8 and through 60:16, and defendants'
24 objection thereto and will make a determination at trial.

25 MS. SHEEHAN: There was another objection by

1 plaintiff to 49:12 to 25, and then it was just 5:3 and then I
2 believe you advised me that the objection was overruled.

3 MS. CONNOR: Counsel, can you say those
4 citations again?

5 MS. SHEEHAN: 49:12 to 25 and then it's just a
6 5 and it should have been a 50.

7 THE COURT: I don't have anything with regard
8 to 49:12.

9 MS. SHEEHAN: I'm sorry, page 49, lines 12.

10 THE CLERK: Those were in her written
11 objections?

12 MS. SHEEHAN: Regarding Ms. Carter being
13 disciplined at Auburn. I believe Ms. Connor objected to
14 that.

15 MS. CONNOR: Yes, I did, your Honor.

16 THE COURT: No, I overruled that objection.
17 It wasn't included in the text order, but I did overrule it.

18 MS. SHEEHAN: Ms. Connor, I just want to
19 confirm, they're the four objections you made, correct? I
20 don't want to read anything in that --

21 MS. CONNOR: Yes.

22 THE COURT: I appreciate that.

23 MS. SHEEHAN: Okay.

24 MS. CONNOR: Your Honor, I -- to clarify in
25 order to comply with your order, on page 87 of the

1 transcript, there's questions concerning Sergeant Mitchell
2 that go through, after she's asked about sergeants' language,
3 and counsel hasn't exactly identified to my recollection the
4 exact lines so I'm trying to comply with your order. And it
5 follows up a string of questions that relate to female body
6 parts, and --

7 THE COURT: You're starting over on page 86
8 through 87?

9 MS. CONNOR: Yes, sir.

10 MR. ANDREWS: All the way at the bottom of 87,
11 your Honor, and I think it's really a new section in
12 questioning, I can't see how it wouldn't be included.

13 THE COURT: I think that that presents the
14 same problem.

15 MS. CONNOR: Okay, so I'm just -- we're not --
16 we're to stop above that?

17 THE COURT: Yes.

18 MS. CONNOR: Okay. I just want to make sure.

19 THE COURT: Any reference to Sergeant
20 Mitchell, again, unless there's some clear language which
21 indicates when it occurred and time period that's within the
22 parameters of your client's complaint, we're not going to get
23 into it. Okay. Are we ready to proceed?

24 MS. SHEEHAN: One more item.

25 THE COURT: Almost a clean getaway. All

1 right. Go ahead.

2 MS. SHEEHAN: I just found out Dr. Reagles is
3 testifying this afternoon and I have a couple problems but I
4 have a solution. One is, I received an update to his report
5 on Monday, that was unexpected, yesterday I received two more
6 updates. No, I'm sorry, I received an update yesterday
7 morning and one at lunchtime. It is now out for somebody to
8 analyze it. I was pretty confident the witness was going to
9 testify Thursday, it would be Reagles and that was confirmed
10 at lunchtime so I didn't even think about Reagles during
11 lunch. One, I'm going to ask that I be permitted to call
12 rebuttal witness when we put on our case regarding this new
13 information. We just received it, it wasn't presented in
14 discovery, it wasn't even presented on the eve of trial.

15 THE COURT: You would be able to do that
16 regardless.

17 MS. SHEEHAN: Okay.

18 THE COURT: No matter when he's called, if you
19 have a rebuttal witness, you call a rebuttal witness.

20 MS. SHEEHAN: Next is in order for me to
21 proceed this afternoon, of course it's in a folder on my
22 hotel desk, I just need one document, two pages printed, and
23 then if I ask if I could cross him in the morning. I haven't
24 had a chance to analyze the report, I have someone doing that
25 for me from DOCS, I'm not prepared.

1 THE COURT: Well, how long is this --

2 MS. SHEEHAN: Information I received yesterday
3 at lunch.

4 THE COURT: How long is this testimony going
5 to be, you anticipate?

6 MS. CONNOR: Dr. Reagles?

7 THE COURT: Yeah.

8 MS. CONNOR: Probably about an hour.

9 THE COURT: Okay. And the reading of the
10 deposition testimony is going to be?

11 MS. CONNOR: Significantly shorter than that,
12 probably a half an hour.

13 THE COURT: Okay, and then you're going to
14 have some?

15 MS. SHEEHAN: Reading. 15, 20 minutes.

16 THE COURT: Is it something where, Mr. Kinsey
17 can cover the deposition stuff while you go and prep?

18 MS. SHEEHAN: I haven't had the new
19 information analyzed yet, I still have to talk to the person
20 tonight, so if he comes back tomorrow for cross, I just
21 received, your Honor, I just received this information
22 yesterday at lunch.

23 MS. CONNOR: Your Honor, she was given an
24 update on Monday and there were just some typographical
25 corrections made, what she was given yesterday.

1 MS. SHEEHAN: You did not give us the update
2 on Monday, you gave it to us yesterday.

3 MS. CONNOR: Correct, she's right, sorry.

4 THE COURT: Yesterday. Okay.

5 MS. SHEEHAN: And your Honor --

6 THE COURT: Let's see where we -- maybe you
7 can at least get started.

8 MS. SHEEHAN: Everything's back at the hotel.
9 I have one document here, I'll ask if it can be printed here,
10 if I can get through voir dire.

11 THE COURT: Do you have somebody that can go
12 get it for you?

13 MS. SHEEHAN: Sure, I'll have to send
14 Mr. Kinsey.

15 THE COURT: All right. Mr. Kinsey can go get
16 it because I'd like you to at least get started.

17 MS. SHEEHAN: Problem is --

18 THE COURT: I don't want to waste this jury's
19 time, and I've tried to be clear about that at pretrial and I
20 understand that things are getting juggled here a little bit,
21 but you know, it's counsel's responsibility to come here
22 prepared. When we say ready for trial, we mean ready for
23 trial, so I appreciate what you're saying, but I'm going to
24 ask you to do your best to get ready.

25 MS. SHEEHAN: Can plaintiff's counsel see if

1 there's another witness she can call in between?

2 THE COURT: I think she's juggled because
3 Ms. Mayville didn't show up and we have the marshals out
4 looking for Ms. Mayville, so you know, we might find her,
5 we'll see.

6 MS. CONNOR: Your Honor, I did try to call
7 other witnesses and was unsuccessful reaching the doctor, and
8 my other witness was unavailable.

9 THE COURT: Okay. Let's get the jury in here
10 and let's get started, please.

11 MS. SHEEHAN: Your Honor, can I get a copy of
12 this two-page document for the voir dire for Dr. Reagles?

13 THE COURT: I'm sorry, I don't know what
14 you're asking.

15 MS. SHEEHAN: Can one of your staff make a
16 copy of a two-page document for me?

17 THE COURT: Absolutely, we can do that for
18 you. Okay. Are we ready now?

19 MS. CONNOR: Yes.

20 THE COURT: All right. Please bring the jury
21 in, Rita.

22 (Jury Present, 1:24 p.m.)

23 THE COURT: Okay, ladies and gentlemen,
24 welcome back. Hopefully you enjoyed your lunch, got a chance
25 to get outside. Beautiful day out. I think we're ready to

1 start. Ms. Connor.

2 MS. CONNOR: Yes, your Honor. At this time,
3 we would like to have the deposition testimony of Susan
4 Carter that your Honor permits to be read into the record.

5 THE COURT: Go ahead.

6 MS. CONNOR: I have somebody who's a reader,
7 your Honor, who I would like to do it in question and answer,
8 following the transcript of the deposition testimony.

9 THE COURT: That's fine. Would you like her
10 to take the witness stand to do this?

11 MS. CONNOR: I thought so. Is that --

12 THE COURT: That's fine.

13 MS. CONNOR: It's up to your Honor.

14 THE COURT: That's fine. Come on up. I don't
15 think we need to swear you in, we can swear you in to read it
16 accurately.

17 THE CLERK: State your name, spell it for the
18 record, please.

19 MS. BETELAK: Victoria Betelak, B-e-t-e-l-a-k.

20 MS. CONNOR: Your Honor, would, in terms of
21 the preliminary matters of the transcript, would I start
22 above -- would I start on page 4, line 21, which reflects
23 the -- my first question?

24 THE COURT: That's fine. And ladies and
25 gentlemen, so it's clear to you what's going on, Susan Carter

1 was a witness who was deposed who has since passed away,
2 she's deceased, and our rules of evidence permit the sworn
3 testimony that was taken at a deposition to be read, parts of
4 it that are admissible which I've already ruled on, okay. So
5 what you're going to hear now are those portions of her
6 deposition that plaintiff's counsel wants to have in the
7 record before you and that I've allowed to be read to you,
8 okay. So that's what we're doing. Go ahead, Ms. Connor.

9 MS. CONNOR: It's a lot of reading is what it
10 is.

11 Q Good morning. I'm Mairead Connor, I'm the
12 attorney representing Penny Collins in her action against the
13 state of New York and other people concerning some of the
14 events that she experienced in Auburn prison and elsewhere in
15 the Department of Corrections. I appreciate you coming in
16 today. Are you employed?

17 A Yes, I am.

18 Q Where are you employed?

19 A Auburn Correctional Facility.

20 Q What do you do there?

21 A I'm a corrections officer.

22 Q How long have you worked at Auburn?

23 A Since January of 2001.

24 Q And before that, did you have a job with the
25 Department of Corrections?

1 A I came in in 2000, and I worked at another
2 facility.

3 Q Which facility was that?

4 A I worked at Butler, the minimum.

5 Q Okay.

6 A I worked at Cayuga, which was a medium, and
7 Fishkill, which is a medium.

8 Q And when did you start working in 2001 at
9 Auburn?

10 A January. I'm not quite sure of the date of
11 January, of 2001.

12 Q During the entire time that you were at
13 Auburn, have you been a corrections officer?

14 A Yes, ma'am.

15 Q Now did there come a time when you were
16 contacted by an investigator for the State Division of Human
17 Rights named Jami Kaplan?

18 A I was contacted, yes, ma'am.

19 Q And did you speak with her?

20 A Yes, ma'am, I did.

21 Q Was that over the telephone or --

22 A Yes, ma'am, it was over the telephone at my
23 personal residence.

24 Q Did she initiate that call?

25 A Yes, ma'am, she did.

1 Q Do you recall when that call took place?

2 A It took place shortly after Ms. Collins left
3 our facility.

4 Q Now did Ms. Kaplan ask you questions
5 concerning Auburn Correctional Facility in that call?

6 A Yes, she did, in reference to an incident that
7 Ms. Collins had reported.

8 Q Now Ms. Kaplan actually made some notes of
9 that call?

10 A Okay.

11 Q And did Ms. Kaplan ask you about how female
12 officers were treated in relation to male officers, officer
13 at Auburn?

14 A Yes, she did.

15 Q And what did you answer to the question?

16 A That there was a difference in treatment.

17 Q Now I'm going to ask you on my own now what
18 she asked you, what do you mean by a difference in treatment?

19 A What do I mean by a difference in treatment?
20 In one respect, we were equal, because the reason I started
21 there is the fact that they are very good about your time
22 off, you are assigned a vacation group, it will be the same
23 vacation group your entire life, they are equal about giving
24 you your PL days.

25 Q You mean personal days?

1 A Personal days, bids on the holiday draw.

2 Q In what respect is the treatment different?

3 A In respect to the treatment is different, it
4 has to do with information you may or may not receive,
5 treatment by the individual COs.

6 Q And by CO do you mean correction officers?

7 A Correction officers, yes, ma'am.

8 Q What do you mean information that you may or
9 may not receive?

10 A How soon you get information about what your
11 job may pertain to during the day, information, say like
12 where a bathroom is located, when you may or may not get
13 reliefs.

14 Q Okay. Did you tell Ms. Kaplan that female
15 officers were treated in a hostile manner as compared to male
16 officers?

17 A You are treated, I don't know if you can say
18 hostile, but you are treated with -- oh, how shall I put
19 this? They don't trust you because of being female.

20 Q Who is they?

21 A Your officers, the officers that you are
22 working with.

23 Q Now did you ever receive different treatment
24 than -- as a female from supervisors?

25 A Yes, ma'am.

1 Q Can you give me an example of that, please?

2 A Job assignments, whether I was allowed to work
3 in an area if they had a particular disagreement with a
4 female working in their area.

5 Q Were there other things written on that wall
6 about other females than yourself?

7 A Yes, ma'am.

8 Q What was written on the wall?

9 A It had to do with Ms. Collins.

10 Q What did you see?

11 A Just that she was included in the whole thing.

12 Q Can you be more specific?

13 A Just incidents that had happened.

14 Q What happened just in terms of -- what I want
15 to know, what I'm asking you is when you looked at the wall,
16 what did you see about Ms. Collins?

17 A Writing, it reminded you of a wall that you
18 would see in a bar or something else where people had a
19 chance to put graffiti up on the wall.

20 Q Now you said pictures and writing, what type
21 of pictures?

22 A Cartoons, ma'am.

23 Q Such as, could you be more specific?

24 A Caricatures of females, caricatures of cats.

25 Q Was it about any particular part of a female's

1 anatomy?

2 A Well, it all had to do with the female
3 anatomy, ma'am.

4 Q Can you be more specific, please, I'm trying
5 to get a picture, I wasn't there and I would like to know if
6 you can just tell me what it is you saw when you looked at
7 the wall about Ms. Collins now.

8 A Bust line.

9 Q Pardon?

10 A Bust line. Yes, that's generally where the
11 COs' eyesight went.

12 Q Can you be more specific about that, were they
13 clothed or unclothed?

14 A Oh, it was kind of hard to tell whether they
15 were clothed or unclothed, because it wasn't filled in, it
16 was just an outline drawing, ma'am.

17 Q Anything else about Ms. Collins?

18 A I remember there were a few things written on
19 the wall, I don't remember what they were.

20 Q Do you remember the nature of those things?

21 A Just the fact that they were derogatory and
22 the fact that I remember in talking to the supervisor before
23 I left that day and requested that we have it painted and as
24 far as I know it was done by the time I got back.

25 Q Okay. In terms of what was derogatory about

1 Ms. Collins, was it sexually derogatory?

2 A Yes, ma'am.

3 Q What?

4 A Like I said it was.

5 Q What type of thing was there?

6 A I don't remember what was there, I'm being
7 very honest with you. I remember being infuriated about the
8 fact that I went down and discovered it, and the fact that I
9 did report it, it was taken care of.

10 Q Was there profanity there?

11 A Yes, ma'am.

12 Q Was it about Ms. Collins?

13 A About both of us.

14 Q Okay. What words were profane, what profane
15 words were there to your recollection?

16 A What was used constantly within the facility,
17 within the speech, which was any word that pertained to a
18 female, and you would not consider it in a regular
19 conversation.

20 Q What word are you referring to?

21 A We're referring to bitch, fuck, anything else
22 that pertained to sex and the female.

23 Q Was the word cunt there? You can still answer
24 the question.

25 A Yes, ma'am.

1 Q Was that in reference to Ms. Collins?

2 A I don't remember if it was in reference to her
3 or myself, but it was there.

4 Q Now, this bathroom is located?

5 A Both bathrooms are in the locker room area.
6 If you went down the stairs from the upper hall, you would
7 make a right as you got down to the bottom of the stairs, and
8 then you would make another immediate right, and that was
9 right off what was then the lineup room. To get to the other
10 bathroom you had to go through to the next locker room area
11 and make a right.

12 Q Okay. Was this bathroom --

13 A Utilized by both sexes.

14 Q It was accessed by both male and female?

15 A Yes, ma'am.

16 Q And did corrections, correction officers use
17 the bathrooms?

18 A That's usually who used the bathrooms because
19 it was below stairs where our lockers were.

20 Q Now other than this bathroom's graffiti on the
21 incident that you just testified about, did you see other
22 graffiti about female employees in other bathrooms of the
23 facility?

24 A Basically, the other bathrooms used in the
25 facility were out in the blocks. I tried to get in and out

1 as quickly as possible.

2 Q Why is that?

3 A Because you shared the bathroom with all the
4 rest of the COs, so it was a matter of you had to get back to
5 your duty post. Some bathrooms don't have a stall door that
6 would lock so it just wasn't conducive to staying in there.

7 Q So you went to the 4-to-12 shift in 2005?

8 A Yes.

9 Q When did you first notice that bathroom door
10 didn't have a latch on it?

11 A When I worked there, ma'am.

12 Q Which was when?

13 A 2001.

14 Q Now to your knowledge, were there other
15 bathrooms at Auburn that could not be latched or locked for
16 privacy for females?

17 A Yes, ma'am.

18 Q Which ones?

19 A Baker block.

20 Q Is that Baker you said?

21 A Yes.

22 Q Is that B block?

23 A Yes, ma'am.

24 Q Were these bathrooms on the block shared by
25 both male and female COs?

1 A Yes, ma'am.

2 MS. CONNOR: Sorry, I just dropped my page and
3 lost my place, excuse me.

4 Q Did you talk to Ms. Kaplan concerning the
5 female uniforms having buttons in certain locations?

6 A Yes, ma'am.

7 Q What did you say to Ms. Kaplan concerning the
8 female uniforms?

9 A Just that -- the fact that I had inquired once
10 that after having inmates staring repeatedly at the buttons
11 to a female officer, about removing buttons from my pockets.

12 Q And why did you want to move buttons from your
13 pockets?

14 A Because I was tired to have it -- it was place
15 where the pockets fell, which was directly over the bust
16 line. They were small pockets and they had a button directly
17 there, and the inmates looked directly at the buttons.

18 Q Now this rumor that you heard, aside from that
19 CO Collins told you, did you hear any detail or --

20 A No details, but most of the guys weren't
21 giving me details about anything. I was almost the only
22 female on the shift, so we really didn't talk. So they
23 weren't giving me anything.

24 Q Why weren't they giving you anything?

25 A We weren't talking, ma'am.

1 Q Why was that?

2 A They didn't want to talk.

3 Q You mean males didn't want to speak?

4 A Yes, ma'am.

5 Q In your view, why didn't the men want to speak
6 with you, speak to you?

7 A They didn't want to speak because they would
8 be ribbed by their fellow officers if caught talking to a
9 female officer at that point, and they didn't want to take
10 the ribbing.

11 Q Did you make any effort to get any certain
12 assignments at Auburn where you would work more or less by
13 yourself?

14 A When I bid my last post.

15 Q And that post is what?

16 A That post is the sallyport.

17 Q And why did you bid the sallyport?

18 A For starters, it was the first one that came
19 up on midnights and I had been trying to get on midnights so
20 that my husband and I would have an easier schedule, and the
21 fact that it suited me. It was a solitary post, I didn't
22 have to deal with rumors, rumor mill, and the whole rest that
23 went with it.

24 Q Okay. Did you tell Ms. Kaplan that you
25 survived at Auburn by trying to get assignments to work in

1 areas where you could work by yourself?

2 A Yes, ma'am.

3 Q Did you ever speak to Penny Collins about
4 that?

5 A She and I talked about a lot of things,
6 various conversations.

7 Q Did you ever speak to her about that, trying
8 to get assignments where she can work by herself?

9 A Yes, ma'am.

10 Q What took place in that conversation?

11 A Just the fact that I told her what I did and
12 suggested that it might be one way to go.

13 Q Where did you first meet Penny Collins?

14 A At work, ma'am.

15 Q And about when was that?

16 A Shortly after she arrived.

17 Q And did you ever work with her?

18 A Not really, in the same area, ma'am, because
19 they don't usually assign women to the same area. Just
20 because they consider it something they don't do. But we
21 would see each other in between times, say if we were out in
22 the yard, you would have different positions that you hold
23 within the yard, I'd see her maybe after shift if she was
24 getting out.

25 Q Are you aware of whether Mary Mayville works

1 for diversity management?

2 A Yes.

3 Q Did you ever speak to her about any questions
4 concerning females at Auburn?

5 A No, ma'am.

6 Q Did you ever attend any training at the
7 facility or elsewhere in the Department of Corrections
8 concerning how female officers should treat --

9 MS. CONNOR: I'm sorry, may I start that
10 again, your Honor.

11 THE COURT: Yes, you may.

12 Q Did you ever attend any training at the
13 facility or elsewhere in the Department of Corrections
14 concerning how male officers should treat female officers?

15 A Everybody at the academy gets training, you
16 sign a piece of paper about the sexual harassment training
17 that you get and when I was at the academy, they had separate
18 sessions, I think it was at least twice for the female
19 officers at the academy, the cadets, if you want to call it
20 that.

21 Q That they, that the females had separate
22 sessions, is that what you are saying?

23 A Yes, ma'am.

24 Q And you attended those sessions?

25 A It was required.

1 Q Who conducted those sessions?

2 A We had two other female officers that did the
3 sessions, ma'am.

4 Q And what material was covered in the sessions?

5 A How to deal with specifics, some of the
6 specific problems.

7 Q Such as?

8 A How to deal with an inmate that is
9 masturbating, that type of thing.

10 Q Any other problems that were discussed or what
11 other material was discussed?

12 A What you should and shouldn't do with the
13 other male officers, that was considered appropriate.

14 Q And along that line, what were you taught that
15 you should and shouldn't do with male officers?

16 A Basically the fact that you're working in a
17 male environment, they consider it, oh, paramilitary type
18 training that you were getting and basically not to expect
19 any preferential type of treatment, and in fact to expect a
20 bit of hostility.

21 Q The source of that hostility was what?

22 A Just the fact that women coming in hadn't been
23 there, hadn't been a -- there weren't a lot of females in a
24 lot of the facilities, so it was the fact that they had the
25 environment to themselves and they didn't have females

1 working in the facility, was a new introduction.

2 Q Was there any other material covered in the
3 sessions concerning relations with male and female officers?

4 A Just that it was suggested that you don't get
5 involved with another officer.

6 Q Did you ever see a manual for female
7 corrections officers published by the department?

8 A I think I did when I went to my first
9 assignment, which was Fishkill, I remember seeing one and
10 that was part of the OJT.

11 Q What is the OJT?

12 A On-the-job training.

13 Q Where did you go to the academy?

14 A Albany, ma'am.

15 Q And when were you there?

16 A I was there in 2000, I was there in 2000,
17 April 24th was the starting date.

18 Q Now you testified earlier concerning
19 conversation you had with the supervisor about the buttons on
20 your uniform?

21 A Yes, ma'am.

22 Q And you testified that that supervisor at the
23 time was an area sergeant and he is now a captain?

24 A Yes, ma'am.

25 Q Is this captain assigned at Auburn?

1 A Yes, ma'am.

2 Q What is the captain's name?

3 A Do I really have to give you names, ma'am?

4 Q I'm going to ask you on this one for the name,
5 please.

6 A Captain Chuddy (phonetic).

7 Q Did you ever hear any other derogatory terms
8 used by males in reference to female employees?

9 A Not that was derogatory, that I would consider
10 a foul word, I mean stupid blond, the usual type thing.

11 Q Okay. References that aren't foul but
12 otherwise derogatory, did you ever hear male employees refer
13 to females with any of those types of references?

14 A Just as far as our intelligence and things
15 like that, yes.

16 Q What reference did you hear about our
17 intelligence?

18 A That it just wasn't level, we didn't know what
19 we were talking about, about being blond, or you should be
20 blond.

21 Q And you testified the word stupid a minute
22 ago, did you ever hear females referred to with that word?

23 A Yes.

24 Q Who made those references, what types of
25 employees?

1 A Correction officers.

2 Q Did you ever hear the correction officers
3 refer to any female body parts?

4 A If you caught them at the right moment in one
5 of their conversations, you could hear just about anything.

6 Q Can you remember some of the references that
7 you've heard?

8 A Discussing their wives, their girlfriends,
9 visitors that came in.

10 Q What words were used for female body parts?

11 A Just the normal, just the normal words that
12 I've heard discussed, just about anywhere.

13 Q What words are you referring to?

14 A Breast, boob.

15 Q Anything else?

16 A Oh, Jeez, they were mostly breast oriented,
17 so -- or occasional remarks about the buttocks.

18 Q And how often would you hear those types of
19 references?

20 A Depending on the conversation that you
21 overheard, it could be on a daily basis, or more than once in
22 a shift, I mean ...

23 Q Did you ever hear supervisors participating in
24 those conversations?

25 A As in sergeants? You could occasionally hear

1 them.

2 MS. CONNOR: Now we're going to go to
3 page 109.

4 Q Did you take offense to any of the material
5 that was related to you at the academy in the separate
6 sessions for female cadets only concerning the male
7 environment and inmate behavior that was directed exclusively
8 to women?

9 A I thought it should have been something that
10 males should have had to have sat through, also.

11 Q Other than the comment about the buttons on
12 your uniform, did you ever have occasion to be subjected to
13 inappropriate or offensive conduct from an individual who was
14 now a captain last name Cuddy?

15 A Chuddy.

16 Q Chuddy, excuse me.

17 A I don't think he remembers me as being the
18 female that was on a sergeant's post where they had a contest
19 about who had the hairiest posterior as far as the male seals
20 were --

21 Q I didn't follow that answer, could you maybe
22 either expand or I'll ask you the question again, what would
23 you prefer?

24 A I think he was a sergeant, and questioned on
25 the post where the COs decided that there was a contest that

1 they were having as to who had the most hair on a male
2 buttocks.

3 Q My question is, were you ever subjected to
4 inappropriate or offensive contact?

5 A That --

6 Q Let me finish that. You were subjected to
7 inappropriate or offensive conduct by Captain Chuddy other
8 than the incident about the buttons?

9 A The fact that he allowed it to go on in a post
10 with me present.

11 MS. CONNOR: We've concluded, your Honor.

12 THE COURT: Thank you, Ms. Connor. Thank you.
13 Okay. Ladies and gentlemen of the jury, as a part of this
14 process, now defense has an opportunity to read sections of
15 the deposition testimony of Ms. Carter that they would like
16 to have in the record. So we're going to do that.

17 MS. SHEEHAN: "Question: Okay. Did you ever
18 write to a superintendent of Auburn concerning how females
19 were treated at Auburn for any purpose?

20 "No, ma'am.

21 "Question: Have you written to anyone else in
22 supervision or management in the facility?

23 "No, ma'am.

24 "Did you ever speak to Penny Collins about
25 that?

1 "She and I talked about a lot of things,
2 various conversations.

3 "Did you ever speak to her about trying to get
4 assignments where she can work by herself?

5 "Yes, ma'am.

6 "What took place in that conversation?

7 "Just the fact that I told her what I did and
8 suggested that it may be one way to go.

9 "Did you ever speak to her about that, trying
10 to get assignments where she can work by herself?"

11 Probably repeated.

12 "Yes, ma'am.

13 "What took place in that conversation?

14 "Just the fact that I told her what I did, I
15 suggested it might be one way to go.

16 "What, if anything, did she say in response to
17 you?

18 "Answer: That she wasn't ready to go on to
19 say a shift where you had the single assignments, that she
20 wanted to work the shift that she was on.

21 "At the time your husband worked at Auburn?

22 "Yes, ma'am.

23 "At the time your husband worked at Auburn?

24 "Yes, ma'am.

25 "Was he a corrections officer also?

1 "Yes, ma'am.

2 "Were you ever disciplined at Auburn?

3 "Yes, ma'am.

4 "What type of discipline did you receive?

5 "I received a writeup and it was put in my
6 file.

7 "When was that?

8 "Oh, years ago.

9 "Was that -- what was the -- why were you
10 written up?

11 "That was my fault, I actually brought
12 something into the facility, my cell phone, and I didn't
13 realize that I had it, the battery was dead.

14 "And that's the only discipline that you
15 received?

16 "No, ma'am.

17 "What other discipline did you receive?

18 "When they realized that I had cats and the
19 cat had been rubbing up against my lunch bag, I was told I
20 needed to take a shower.

21 "Why would you call that discipline?

22 "Because I was called up to the lieutenant's
23 office.

24 "When did that take place?

25 "Oh, while Ms. Collins was at the facility.

1 "Was union there?

2 "No, ma'am. That happened before they put the
3 stuff on the wall in the bathroom.

4 "Were you sent home that day?

5 "No, ma'am, I was not. I did get rid of my
6 lunch bag.

7 "Okay. When you were called up to the
8 lieutenant's office, what did the lieutenant say to you?

9 "He showed me a copy of a page from the
10 employee's manual about being neatly groomed and that's what
11 he showed me and that it was a violation of employee's
12 manual.

13 "Okay. Are you familiar with an individual
14 named Mary Mayville?

15 "I heard of her, but I'm not really familiar
16 with her, no, ma'am.

17 "Were you ever asked to escort her around the
18 facility?

19 "The only thing I've done specifically with a
20 female is that I have been on a watch with a female so I had
21 to do escorts for a female.

22 "Do you recall the time where Ms. Mayville was
23 in the facility and interviewing certain COs or sergeants or
24 lieutenants, captains?

25 "Okay. I know there was some interviewing

1 being done, but I was not told who was doing the
2 interviewing, just that interviews were being done.

3 "Okay. Were you aware of whether any female
4 CO were asked to escort Ms. Mayville around the facility?

5 "No, I was not. It would have been done on
6 the day shift and I wasn't on days.

7 "Do you know -- okay. So who else would work
8 on days?

9 "Oh, I forgot, just before Ms. Collins left
10 there was another CO that came in, Lisa Cole.

11 "Lisa Cole?

12 "Mm-hmm.

13 "Did she work on days?

14 "She does now, but I'm trying to remember what
15 shift she actually worked on when she got there.

16 "Okay.

17 "Oh, and Bridget, I'm sorry, Bridget Smith,
18 she was on a 3 to 11.

19 "So the best of your recollection, the only
20 female that you knew of that worked on days when -- aside
21 from Ms. Collins?

22 "Yes, aside from Ms. Collins when Ms. Collins
23 was there, was CO Mattie. Yes, and oh, CO Galinski
24 (phonetic), came back, too.

25 "Can you say that name again, please?

1 "It was Galinski (phonetic) and now it's
2 Gasparilla. Galinski, Galinski.

3 "And it's now what?

4 "Gasparilla, I'm not sure how to spell it.

5 "Did she work on days when Ms. Collins was
6 there?

7 "I think so.

8 "And in the last year or so, have there been
9 any new females?

10 "Female correction officers? Yes. To be
11 honest with you, I don't remember their names, but we have
12 quite a few female officers.

13 "Was there any other material covered in
14 sessions concerning relations with male and female officers?

15 "Just that it was suggested that you don't get
16 involved with another officer.

17 "Anything else?

18 "They reiterated that being on special
19 precautions about male inmates and the fact that they came on
20 to other female COs, and do not fall into that trap. It was
21 really how to report certain incidents that happened to you,
22 happened that you were supposed to follow in a specific order
23 that you reported it.

24 "Did you have written material for other
25 sessions?

1 "No. It was at least verbal or at least my
2 session, what we call my specific group which was a session
3 they did not provide any written materials. The only thing
4 that you had written materials on was your sexual harassment
5 class.

6 "Was that a separate class than what you
7 described?

8 "Yes, ma'am. The sexual harassment was
9 attended by both male and female, and it was given during
10 regular time.

11 "Okay. Debbie Lamb, does she still work
12 there?

13 "Yes, ma'am.

14 "Is she a CO?

15 "Yes, ma'am.

16 "Are there any females who earn supervision in
17 Auburn?

18 "We now have Deputy Superintendent O'Mara, she
19 is a female.

20 "When did she come to Auburn?

21 "Within say the past year.

22 "Anyone else?

23 "Sergeant Hart was there when I first got
24 there, and then she went to the outside hospital 7 SU.

25 "7 SU?

1 "Yes, ma'am. That's the hospital. That's the
2 hospital annex for the prison unit over at SUNY.

3 "And Sergeant Harp, did you say?

4 "Hart.

5 "She was a CO before she was a sergeant?

6 "Yes, ma'am, as far as I know.

7 "Do you know if the deputy was a CO?

8 "I don't think so. Deputy Superintendent
9 O'Mara?

10 "Yes.

11 "I don't think so, and I know there were
12 several female sergeants that passed through here, but I
13 don't recall their names.

14 "Okay. Now Deputy Superintendent O'Mara,
15 where was her former assignment if you know?

16 "I just know that it was up north.

17 "Have you ever been present or directly --
18 have you ever been present or directly observed Mr. Goord's
19 interaction with the plaintiff Ms. Collins?

20 "Not that I know of, sir.

21 "Did Ms. Collins ever recall to you that she
22 was being treated unfairly, what regard, or treated in any
23 inappropriate fashion by Mr. Goord?

24 "That, I didn't hear mention about him in
25 person, no.

1 "Did Ms. Collins ever convey any sentiment to
2 you of a negative nature concerning Mr. Goord that you can
3 recall?

4 "No.

5 "Who is John Burge?

6 "He was our former superintendent.

7 "Did you ever have occasion to interact with
8 him while he was superintendent at Auburn Correctional
9 Facility?

10 "Only on tour through.

11 "Explain what you mean, please.

12 "When you first arrive at a facility, you are
13 given two days as a day to get acclimated, day to fill out
14 paperwork and tour the facility and if you were present, you
15 meet other people, you may meet your steward or your
16 superintendent if he was present, you go down and you find
17 out where personnel is, on that order.

18 "And from the time you came to Auburn until
19 the time he retired, Mr. Burge, did you have any direct
20 interaction with him as an employee of the department?

21 "Not personal per se. I knew he made tours of
22 the facility occasionally like everybody does, as far as the
23 officers are concerned.

24 "Is there any occasion that you can recall
25 that you engaged in a conversation with him or the like?

1 "No. No.

2 "Okay. Were you ever subjected to any
3 inappropriate physical contact by Mr. Burge?

4 "No.

5 "Were you ever harassed or annoyed in an
6 inappropriate fashion by Mr. Burge?

7 "No.

8 "Other than what Ms. Collins has told you, do
9 you have any personal knowledge of Mr. Burge's interaction
10 with the plaintiff?

11 "No.

12 "Were you ever present when Mr. Burge was also
13 present together with Ms. Collins at the same time and in the
14 same place?

15 "No.

16 "Do you have any knowledge about any
17 interaction between Ms. Collins and Mr. Burge other than that
18 that Ms. Collins has provided to you?

19 "No.

20 "Are you familiar with Harold Graham?

21 "Yes, sir, he is our present superintendent.

22 "Have you had any occasion to interact with
23 Superintendent Graham since he took over for Mr. Burge as
24 superintendent of Auburn?

25 "Yes, sir, because I let him in every day.

1 "What does that entail?

2 "I usually greet him and say hello to him and
3 that's -- I open the gate for him, I locate his ID, and
4 highlight things for the day.

5 "Is that part of your security responsibility,
6 to verify his identity as he is passing through?

7 "Yes, sir.

8 "And in that respect, he is no different than
9 any other employee or visitor or the like?

10 "No. He has to show like everyone else. And
11 during the interaction, you're behind some sort of a
12 bulletproof, we call it a bubble.

13 "You're looking through a transparent material
14 at him, is that correct?

15 "Yes.

16 "Okay. In the course of that interaction,
17 what kind of conversation do you have, if any, with
18 Superintendent Graham as he arrives at the facility?

19 "Usually just hello. Occasionally, if he's
20 been on vacation, I have asked if he had a nice time, when he
21 came back, if I know he's been only out for that reason.

22 "Have you ever been subjected to any
23 inappropriate physical contact by Superintendent Graham?

24 "No.

25 "Have you ever been subjected to any

1 inappropriate verbal comments, statements, directed at you by
2 Superintendent Graham?

3 "No.

4 "Other than what Ms. Collins has told you, do
5 you have any direct personal knowledge of any interaction
6 that Ms. Collins has had with Superintendent Graham?

7 "No.

8 "Do you have any knowledge of any interaction
9 between Superintendent Graham and Ms. Collins other than what
10 she herself has told you?

11 "No.

12 "Have you ever observed Brian Fischer, Glenn
13 Goord, John Burge, or Harold Graham address any female
14 employee, CO, or otherwise, inappropriately for using
15 offensive language or conduct?

16 "No, sir.

17 "Did you take offense to any of the material
18 that was related to you at the academy in the separate
19 session for female cadets only concerning the male
20 environment and inmate behavior that was directed exclusively
21 to women?

22 "I thought it should have been something that
23 males should have had to sat through, also.

24 "My question is, did you take any offense to
25 any of the material that was presented at the time?

1 "Not personal offense. I just thought it was
2 ridiculous.

3 "Okay. Why?

4 "They suggested that one of -- well, one of
5 them suggested that underneath your uniform that you go ahead
6 and wear Spandex shorts and Spandex pants and then wear a
7 sports bra over it, and to work an eight-hour shift in that
8 condition of a building would have been sheer torture.

9 "What about that offended you?

10 "Just the fact that they thought that would
11 prevent someone from getting raped.

12 "When you say they, who are you referring to?

13 "The people instructing the course.

14 "Were there any males given the instructions?

15 "No.

16 "Have you ever had occasion to directly submit
17 any complaints about offensive or inappropriate conduct by
18 male employees to John Burge?

19 "No.

20 "Did you ever do the same to Harold Graham?

21 "No.

22 "I believe I asked you this and then I should
23 be done. You didn't have interaction either by
24 correspondence or by telephone to either Glenn Goord or Brian
25 Fischer either?

1 "No."

2 THE COURT: Okay. Does that complete the
3 reading of the deposition testimony?

4 MS. CONNOR: As far as I know, yes, your
5 Honor.

6 THE COURT: Ms. Connor, Ms. Sheehan for the
7 state?

8 MS. SHEEHAN: Yes, your Honor.

9 THE COURT: And Mr. Andrews?

10 MR. ANDREWS: Nothing, your Honor.

11 THE COURT: Nothing, okay. Very well.
12 Ms. Connor, your next witness, please.

13 MS. CONNOR: The plaintiff calls Dr. Kenneth
14 Reagles.

15 THE CLERK: Can you state your full name,
16 spell it for the record, please.

17 THE WITNESS: My name is Kenneth Reagles,
18 R-e-a-g-l-e-s.

19
20 K E N N E T H R E A G L E S , called as
21 a witness and being duly sworn, testifies as
22 follows:

23 THE COURT: Good afternoon.

24 DIRECT EXAMINATION BY MS. CONNOR:

25 Q Good afternoon, Dr. Reagles.

1 A Good afternoon.

2 Q Would you give us your full name, please.

3 A Sure. My name is Kenneth, middle initial W
4 for William, Reagles. Last name is spelled R-e-a-g-l-e-s.

5 Q Where do you reside?

6 A I reside in Manlius, New York.

7 Q Do you have a professional address as well?

8 A Yes, actually I have two. My business address
9 is 500 Plum Street, Suite 600, I have an office at Syracuse
10 University, 258 Huntington Hall.

11 Q And the Plum Street address, what city or town
12 is that located in?

13 A That's Syracuse, it's down in the Franklin
14 Square area.

15 Q What is your profession, Dr. Reagles?

16 A I'm a rehabilitation psychologist, professor
17 of rehabilitation services, specialist in vocational
18 rehabilitation, and the economic consequences of disability.

19 Q Are you presently employed?

20 A Yes, I am self-employed as the owner of a
21 business enterprise known as K.W. Reagles & Associates, and
22 I'm professor emeritus at Syracuse University which is a
23 semi-retired status.

24 Q And you're professor emeritus, in what
25 department is that?

1 A The department of rehabilitation services at
2 Syracuse University.

3 Q Would you please tell us what your previous
4 work experience is.

5 A Yes. Well, I got my doctorate degree in 1969
6 from the University of Wisconsin at Madison, and I spent the
7 first year as a visiting professor of a university in Israel
8 where my major professor and I and an Israeli colleague began
9 the first rehabilitation counseling program outside of the
10 United States.

11 I returned to University of Wisconsin in the
12 fall of 1970 and spent the next five years as the research
13 director of a federally funded rehabilitation research
14 institute there.

15 In 1975 I learned of a position vacancy at
16 Syracuse University, had friends who were on the faculty here
17 so I applied for the position, and I was a successful
18 applicant. So in the fall of 1975 my wife, daughter, and I
19 moved to Syracuse. I joined the faculty, eventually became
20 chairman of the department of rehabilitation services, and I
21 was a professor there for, what, 21 years, and became
22 professor emeritus in 1996.

23 In 1980, a physician, Dr. Ronald Dougherty and
24 I, established an outpatient clinic called Pelion and that
25 clinic provided both medical and rehabilitation services to a

1 variety of patient populations, including individuals who
2 were misusing prescription drugs. The program was eventually
3 expanded to include individuals who were abusing alcohol and
4 illicit drugs. But I sold my half interest in that clinic in
5 1998.

6 But in 1969, I began doing what I'm doing
7 today, what is called forensic rehabilitation, and that is
8 essentially expressing my opinions regarding the consequence
9 of injury or impairment on an individual's capacity to work,
10 not only in the labor market, but also at home. And then the
11 other thing that I do is to determine the cost of the
12 anticipated future health-related goods and services that
13 individuals will require as a result of their disablement,
14 it's what's called a life care plan. And so essentially
15 that's what I've been doing for these past 40 years, if you
16 will.

17 Q Sounds like you're very busy, to me. Now, in
18 your previous answer, did you provide us with all of your
19 educational background or is there anything in addition to
20 that?

21 A Actually, I didn't. I have an undergraduate
22 degree in education from the University of Wisconsin at
23 Lacrosse, that was achieved in 1962. I have a master's
24 degree in counseling and guidance from San Diego State
25 University, that was achieved in 1966, and then the PhD, the

1 doctorate of philosophy and rehabilitation counseling
2 psychology from University of Wisconsin at Madison, that was
3 achieved in 1969.

4 Q Thank you. What subject matter is included in
5 the course of study leading to a degree in rehabilitation
6 counseling psychology?

7 A Well, we deal with individuals who have
8 impairments, they can be physical, mental, emotional, and so
9 there's a great deal of study of disability, how people
10 become disabled, the nature of disability, how disability is
11 dealt with, not only in terms of treatment, but also we're
12 concerned about getting people back to work so there's a
13 great deal of study, what's called vocational psychology,
14 where people work, how they do their work, what it takes to
15 do a job, what happens to people who become impaired, to the
16 extent that they may not be able to do the work that they
17 once did. Then if that's true, then there is the process
18 called vocational rehabilitation, where individuals that we
19 trained at Syracuse University and who are trained in 90
20 other institutions across the country assist those
21 individuals in trying to become productive members of society
22 again. Training, job placement, modifying jobs, modifying
23 equipment, that sort of thing so people can compete once
24 again even though they may have a disabling condition. We do
25 what we do within the context of a counseling relationship so

1 there's a great deal of study of personalities, counseling
2 theory and techniques, job placement techniques, and more
3 recently, rehabilitation counselors become specialists in
4 using technology to minimize the consequences of disability.
5 Use of computers, use of sensory devices, mobility equipment,
6 all kinds of adaptive and assistive devices that can be used
7 by people to help them do work that they might not be able to
8 do otherwise. So those are the essential areas of study.

9 My particular area of inquiry and professional
10 interest from the date of my doctoral studies at Wisconsin
11 has been about the economic consequences of disability. We
12 know that when people are unable to work as a result of their
13 disability, there is an economic consequence, their lost
14 wages, the lost fringe benefits, their lost capacity to do
15 work around the house, all those little jobs we do around the
16 house have economic value, so that has always been an
17 interest of mine, and that has been part of my professional
18 research, my scholarly writing.

19 Q And Dr. Reagles, in your work at the
20 University of Wisconsin and then more recently Syracuse
21 University, have you completed any research in your field?

22 A Yes, I have.

23 Q What is that, please?

24 A Well, the first five years was exclusively
25 doing research, we did program research, program evaluations

1 for six states in the Midwestern region as well as agencies
2 of the federal government, the Rehabilitation Services
3 Administration, the Office of Management and Budget, we
4 looked at how rehabilitation services can be delivered more
5 effectively and more efficiently. My research continued here
6 at Syracuse University. I have conducted research projects
7 for what used to be called the Office of Vocational
8 Rehabilitation, eventually became VESID, now it's called
9 Access VR but it's essentially our state vocational
10 rehabilitation program. I work with the agency there to
11 develop measures of effectiveness and efficiency.

12 So research is, you know, part of what you do
13 as a professor, and when you do research, then you write
14 reports and you publish those reports and that's -- that's
15 one of the ways in which people who are professors become
16 evaluated for tenure.

17 Q Now have you been involved in publishing any
18 of your research or written any books in your field?

19 A Yes, I've been the author or the coauthor of
20 five books, 12 chapters that have appeared in books that
21 others have edited, 18 monographs, the monographs are
22 essentially short books, they're usually the final project
23 reports of research projects that I was involved in, and then
24 I have nearly 60 articles that have appeared in professional
25 journals.

1 Q And the articles that have appeared, that
2 appear in professional journals, do they relate to your field
3 of expertise?

4 A Exclusively, yes.

5 Q Now, could you share with us the professional
6 organizations that you belong to?

7 A Surely. I belong to the International
8 Association of Rehabilitation Professionals, the American
9 Counseling Association, the National Rehabilitation
10 Association, the National Council of Rehabilitation
11 Educators, the National Association of Forensic Economists.

12 Q And in these organizations, have you had any
13 experience being a leader of any of them?

14 A Yes, I've been the national president of the
15 American Rehabilitation Counseling Association, as well as
16 the national president of the National Council of
17 Rehabilitation Educators. Rehabilitation educators are
18 essentially college professors who have an association that
19 is concerned with how rehabilitation counselors can be
20 educated and in more effective ways.

21 Q And have you ever served as a consultant for
22 any international rehabilitation services?

23 A Yes, I have. I've been a site visitor and
24 project evaluator for our federal government in going abroad
25 to Israel, to Egypt, to Yugoslavia, what used to be

1 Yugoslavia, India, Pakistan, England, and the Virgin Islands.

2 Q Now have you ever offered your services to
3 attorneys and their clients?

4 A Yes.

5 Q And what is the nature of this service that
6 you provide to these attorneys, and clients?

7 A Essentially what I'm asked to do is to
8 evaluate individuals who have become impaired in some way. I
9 would say more frequently than not, the impairment is
10 physical in nature. Individuals who are involved in serious
11 motor vehicle crashes, work-related incidents, incidents of
12 medical malpractice where a surgery went wrong, for example.
13 Children who have cerebral palsy, individuals with severe
14 burns, multiple trauma including amputations, and so what I'm
15 asked to do is to evaluate the individual, make a
16 determination of first of all whether or not they could go
17 back to the work that they once did, with -- even with
18 accommodations. If not, is there other work that they might
19 be able to do. And then usually when you have that situation
20 where a person was working in one capacity and now is not
21 able to work to the same extents as before, there's an
22 economic difference.

23 And another economic issue is the value of the
24 work that people used to be able to do at home, and now are
25 unable to do. Some of the people I evaluate are not employed

1 in the labor market, their work is at home. More -- that's
2 most commonly of course a housewife who, when she becomes
3 physically impaired, may not be able to do the work that she
4 once did and so there is an economic consequence. And then,
5 the last element of economic damage that I'm asked to look at
6 is the cost of future health care, and that would be all of
7 the doctor's visits, medications, therapies, surgeries,
8 whatever it is. And so what I do is to evaluate the person,
9 form my opinions, prepare a report, and usually submit that
10 to attorneys. And I work for both plaintiffs and defendants,
11 so I work both sides of the street if you will.

12 Q Now, have you ever conducted any training for
13 legal professionals such as attorneys or judges?

14 A Yes, I do.

15 Q What training is that, please?

16 A Well, I'm a guest lecturer at the Syracuse
17 University Law School, about how to assess damages in
18 personal injury and wrongful death cases. Judge Cherundolo,
19 who is a New York State Supreme Court judge, is the
20 instructor of that program. And I also have conducted
21 training for attorneys about rehabilitation issues related to
22 specific disabilities, spinal cord injuries, traumatic brain
23 injuries, that sort of thing. Some of the training has been
24 for judges about a particular law in New York State. I was
25 not there as a legal expert but more to facilitate the

1 discussion about how this law was implemented because it was
2 somewhat controversial.

3 Q And how many times have you testified in
4 matters of this sort?

5 A Well, this is my 42nd year of doing this type
6 of work so it is in excess of 500 times.

7 Q What courts have you testified in?

8 A Courts like this, U.S. federal court, not only
9 in Syracuse but across the state, and in other states as
10 well. Testified in New York State Supreme Courts, again,
11 from Buffalo to Albany to Malone down to Binghamton and
12 places in between, other states. I've also testified in
13 Canada.

14 Q Now in your testimony, do you, have you
15 testified for both plaintiffs and defendants?

16 A Yes.

17 Q And are you paid for your services?

18 A Yes, I am.

19 Q And do your fees depend on the outcome in any
20 manner, or in this matter?

21 A No, they don't, I'm paid for my time.

22 MS. CONNOR: At this time, your Honor, I'd ask
23 for a ruling that Dr. Reagles is an expert under the Federal
24 Rules of Evidence.

25 THE COURT: Any voir dire?

1 MS. SHEEHAN: Voir dire, your Honor?

2 THE COURT: Okay, go ahead.

3 VOIR DIRE EXAMINATION BY MS. SHEEHAN:

4 Q Good afternoon, Dr. Reagles, my name is Cathy
5 Sheehan, Assistant Attorney General. My co-counsel Roger
6 Kinsey is picking up some documents for me, we represent the
7 state of New York --

8 A Surely.

9 Q -- the Department of Corrections and Community
10 Services, former Superintendent Goord, former Commissioner
11 Glenn Goord --

12 A Okay.

13 Q -- former Superintendent John Burge,
14 Superintendent Harold Graham, okay?

15 A Surely.

16 Q Doctor, do you hold any current professional
17 licenses in New York?

18 A No, I do not.

19 Q Do you hold any current certifications from
20 any professional society or organization?

21 A No, I've written --

22 Q Just --

23 A I've helped write the exams for those
24 certification exams but I'm not certified myself.

25 Q Which exams?

1 A The certification of rehabilitation
2 counselors.

3 Q Rehabilitation counselors?

4 A Yes.

5 Q When you received certification, passing that
6 test, what are you certified to do?

7 A It's essentially, it's a certification for the
8 rehabilitation counselors, it's a certification that you have
9 fulfilled minimal educational requirements and that you have
10 a sufficient body of knowledge to practice as a
11 rehabilitation counselor. It's a nationwide examination.

12 Q Do you think current certifications from
13 professional societies or organizations are important in
14 assessing qualifications, knowledge, experience, and skills
15 of a professional in your field?

16 A Absolutely. If -- if I were a younger person,
17 that would be one of the first things I would do, is become
18 certified.

19 Q You'd get certified?

20 A Right.

21 MS. CONNOR: Your Honor, I'm very sorry to
22 interrupt but I cannot hear counsel. I've been trying, I've
23 tried to let it go, I thought she'd raise her voice but I
24 can't.

25 THE COURT: Counsel, can I ask you to step

1 back to the podium so you can use the microphone.

2 Q Do you think continuing education requirements
3 for professional education -- do you think continuing
4 education requirements for professional certifications are an
5 important part of assuring that people in your field are
6 current in their discipline and that their opinions are
7 reliable?

8 A Absolutely, that's why I conduct continuing
9 education seminars for rehabilitation counselors, forensic
10 economists and others.

11 Q Why did you decide never to obtain a license
12 for any discipline in New York?

13 A Well, first of all, there isn't a licensure
14 for rehabilitation psychologist in New York State. The
15 certification, as I said, I helped write the exam so I
16 thought it was hardly fair if I were to take the test and
17 become certified as a rehabilitation counselor. It was --
18 the certification was initially for individuals with a
19 master's degree. In more recent years, individuals with
20 doctorate degrees have gotten certified. I chose not to.

21 Q So the only certification you would consider
22 is rehabilitation certification?

23 A I'm sorry, what?

24 Q Rehabilitation services certification, that's
25 the only certification you would consider important to your

1 line of business?

2 A No. If I were in another state, I'd be
3 licensed as a psychologist. If I had remained in Wisconsin I
4 could be licensed as a psychologist. New York State doesn't
5 have a category for rehabilitation psychologist.

6 Q Okay. Do you have any degree in accounting?

7 A In accounting, no.

8 Q Do you have any degree in economics?

9 A I don't have a degree in economics, no.

10 Q Do you have a degree in finance?

11 A No.

12 Q Do you have a degree in actuarial science?

13 A Can you define that, please.

14 Q Actuarial science as a discipline. Do you
15 have any science degree?

16 A No, I just -- I just wanted to make it clear
17 that actuarial scientist is a rather -- it's a very small
18 group of professionals and it's -- I don't have a degree in
19 actuarial science, no.

20 Q Thank you. Do you have any professional
21 certifications in accounting?

22 A In none of those disciplines.

23 Q Finance? Okay.

24 A Okay.

25 Q Do you believe that somebody with a degree or

1 professional certification in accounting, finance, economics,
2 or actuarial science is qualified to present an opinion about
3 future income and wages?

4 A Not necessarily. Depends on what they study.

5 Q Do you believe that you're qualified to be a
6 forensic economist?

7 A Well, regardless of what I think, I have been
8 found to be qualified by courts such as this one, and so --

9 Q I'm asking you if you believe you're qualified
10 to be --

11 A Absolutely.

12 Q Would you agree with me that there are no
13 credentials apart from a \$165 fee to become a member of the
14 National Association of Forensic Economists?

15 A I don't know what the annual membership fee
16 is, but I would agree with you that that summarizes the
17 eligibility criteria, yes.

18 Q Have you ever published an article in the
19 Journal of National Association of Forensic Economists?

20 A No, I have not.

21 Q Does anyone in K.W. Reagles & Associates have
22 a degree or certification in accounting?

23 A No, they do not.

24 Q Finance?

25 A No.

1 Q Economics?

2 A No.

3 Q Actuarial science?

4 A No.

5 Q Have you ever treated or cared for any
6 patients who require vocational rehabilitation services in
7 the last 10 years? Let me rephrase that. Have you testified
8 over the last 10 years for somebody similarly situated as
9 Ms. Collins?

10 A Have I testified?

11 Q Correct.

12 A If you include depositions, yes.

13 Q Have you treated or cared for any patient in
14 the last 10 years that has been similarly situated to
15 Ms. Collins?

16 A Well, the last 10 years, I have not provided
17 therapeutic services, my role has been as I described it, as
18 evaluating individuals to determine the consequences of their
19 impairment.

20 Q Isn't it true that you've never treated any
21 patient about whom you have rendered an opinion as to their
22 future employability over the last 10 years?

23 A I think I just answered that with my previous
24 answer.

25 Q Isn't it true you've never treated plaintiff?

1 A That's not my role. I was not retained to
2 treat Ms. Collins. I'm aware of the treatment that she has
3 received but I was not asked to become involved to treat her.

4 Q Are you able to explain the concept of
5 discounting the present value according to New York law?

6 A Of course.

7 Q Have you obtained what in your professional
8 opinion is essential information in order to present your
9 opinions on the issues in this litigation according to the
10 checklist on your firm website?

11 A Very definitely.

12 MS. SHEEHAN: Okay, one minute, your Honor.

13 Q You have in this case a signed letter of
14 agreement?

15 A Yes, I do.

16 Q Retaining check?

17 A Yes.

18 Q Complaint?

19 A I believe I do, yes.

20 Q Accident/incident report?

21 A Yes.

22 Q EBTs of the plaintiff?

23 A I don't have them in my file, I'm aware of
24 them.

25 Q Did you review them?

1 A Some of them, not all of them.

2 Q Do you know which ones you've reviewed?

3 A Not off the top of my head, no.

4 Q Medical records?

5 A Yes.

6 Q To present date. ER hospital records?

7 A Yes.

8 Q Physician records from plaintiff?

9 A Yes.

10 Q Psychologist/psychiatrist reports?

11 A Yes.

12 Q Psychiatrist/psychologist reports from
13 defendants?

14 A Yes, Dr. First.

15 Q Allied health provider reports?

16 A Yes.

17 Q Functional capacity evaluation?

18 A There was none given in this particular
19 instance, so there was not one available.

20 Q Why was one not given?

21 A Well, functional capacity evaluations are
22 primarily for physical impairments, what individuals are able
23 to do and can't do as a result of physical disability.

24 Q School records?

25 A I had -- I had some school records.

1 Q Which ones did you have?

2 A I don't have transcripts, I have the --
3 Ms. Collins' recitation of what degrees she had, what schools
4 she attended, that sort of thing but I do not actually have
5 the transcripts of her attendance at various institutions.

6 Q Did you ever have it in your possession?

7 A I don't recall ever having seen them, no.

8 Q Any other school records in addition to the
9 transcripts?

10 A No.

11 Q Any current records?

12 A Could you be more --

13 Q I understand you just met with her a few days
14 ago?

15 A Yes. I have Dr. Alley's most recent medical
16 office note. I believe that's the most recent medical report
17 that I have.

18 Q What else was provided to you during that
19 meeting?

20 A When I met with Ms. Collins, I was principally
21 a -- oh, I know, the actual documents were the -- her wage
22 statements for the past five years.

23 Q What document are you referring to, you say
24 wage statements?

25 A They are the federal 1099s.

1 MS. CONNOR: Your Honor, I'm going to object,
2 this is beyond voir dire in terms of his expert
3 qualifications. This may go into cross, it may be completely
4 improper. I didn't want to interrupt counsel but at this
5 point it's -- I think it's way beyond voir dire.

6 THE COURT: I'd have to agree, you're getting
7 into areas that -- regarding him getting into an opinion and
8 we haven't gotten there yet, we want to talk about his
9 qualifications.

10 MS. SHEEHAN: Your Honor, I object to this, to
11 Dr. Reagles being qualified as an expert in the area of
12 evaluating the loss of expected earnings, valuation of past
13 wages lost, past benefits lost, future benefits lost. I
14 mean, he has no economic background. I don't object to his
15 being qualified as an expert regarding Ms. Collins' future
16 health care needs, what he calls life care plan. Other than
17 that, he has presented no qualifications to give a sort of
18 damages, money, economist type opinion. You know, also, your
19 Honor, also pension. He's evaluated the loss of New York
20 State pension.

21 THE COURT: Okay, Counsel. Ms. Connor.

22 MS. CONNOR: Yes, your Honor, I could do some
23 followup with the witness.

24 THE COURT: That's fine, go ahead.

25 CONTINUED DIRECT EXAMINATION BY MS. CONNOR:

1 Q Dr. Reagles, you testified that you -- pardon
2 me, that you wrote books?

3 A Yes.

4 Q And what is the title of your latest book?

5 A It has to do with the assessment of the value
6 of household services, how the methods by which the lost
7 capacity to perform household work is quantified. It's
8 essentially an economic analysis of a person's diminished
9 capacity to perform household work.

10 Q And what do you mean by an economic analysis?

11 A It's essentially, there are essentially two
12 methods used to determine the value of household work. One
13 is what we call the replacement method, in other words if we
14 had to hire somebody to provide the services that someone
15 might have provided but now can't because of their
16 disability, what would you have to pay them. Turns out that
17 on the average, it's about \$11 an hour. But then the other
18 is to look at the various occupational roles that people
19 perform within the home, and determine what is the market
20 value of that kind of work. If you take somebody who is --
21 does a lot of work around the house, they do handyman kinds
22 of things, may chauffeur their kids to ball games and school,
23 they may do painting, they may do wallpapering, well, what is
24 the market value of that and that's another way of
25 determining what the value of household work is. So that's

1 what that book was about.

2 Q When did you write that book?

3 A That was about five or six years ago, as I
4 recall.

5 Q And how many -- Withdrawn.

6 You testified that you had qualified as an
7 expert in other courts, and how many of those qualifications
8 were related to economic analyses of loss?

9 A I would estimate about three-quarters of them.

10 Q Approximately what -- how many would that be?

11 A Might be 400 times.

12 Q And have you had experience in doing those
13 analyses with respect to valuing future pension values and
14 loss with respect to disability related to somebody's
15 pension?

16 A Commonly that is done. Not as commonly as
17 determining the individual's lost wages and their fringe
18 benefits, taken collectively, but yes, pension benefits are
19 included in fringe benefits.

20 Q And is it common in your analysis to -- in
21 these approximately 400 times that you've done this, is it
22 common that you would analyze the future loss of earnings
23 with respect to any particular individual who had suffered a
24 disability and was -- had a lawsuit, and income as a result
25 of that?

1 A That's what I do day in and day out. We -- my
2 firm handles approximately 150 to 175 individuals a year who
3 have been seriously disabled, and as a result of their
4 disability, are unable to work or unable to work to the
5 extent that they once were, in a competitive labor market.

6 MS. CONNOR: Thank you, your Honor. I renew
7 the motion to qualify Dr. Reagles.

8 MS. SHEEHAN: Your Honor, his recent
9 publication was loss of household work, that's not the
10 evaluation he's going to offer here according to the report I
11 received. He testified he does an analysis of loss, loss of
12 what? Can I ask him a few more questions regarding pension?

13 THE COURT: Very limited, Counsel, go ahead.

14 VOIR DIRE EXAMINATION BY MS. SHEEHAN:

15 Q Doctor, when was the last time you predicted
16 loss of a state pension?

17 A I'm not sure. Might have been ... trying to
18 think. I had two Department of Correction employees from the
19 Rochester area approximately two years ago where I did this
20 similar analysis.

21 Q And did you testify in court on those two
22 cases?

23 A No, those were depositions.

24 Q Okay. When was the last time you testified in
25 court and you were qualified to testify under similar

1 circumstances here?

2 A Oh, my. Maybe like three weeks ago, four
3 weeks ago.

4 Q Can you give me the name of the case? Was it
5 a Department of Corrections employee?

6 A No, it was not. No.

7 Q And did it involve a union contract?

8 A It did. It was before Judge Miday, Court of
9 Claims case.

10 Q Court of Claims case?

11 A Yes.

12 Q Was it --

13 A When New York State was being sued similar to
14 this situation.

15 Q Was it a NYSCOPBA contract?

16 A It was CSEA contract.

17 MS. SHEEHAN: Your Honor, I object to this, to
18 this doctor being qualified.

19 THE COURT: Okay, Counsel.

20 MS. SHEEHAN: Only in the economic areas.

21 THE COURT: Dr. Reagles is going to be
22 qualified, he's going to be allowed to testify. Ladies and
23 gentlemen of the jury, it's important that you understand
24 that it's up to you to decide the weight and credibility to
25 give any witness, including a so-called expert witness. Just

1 because someone has degrees and has testified previously,
2 it's up to you to analyze what you've heard from both
3 counsel, and the responses that Dr. Reagles has given as a
4 witness, and it's up to you to judge what weight and
5 credibility to give his evidence, or his testimony, excuse
6 me, the evidence that he'll be offering to you, okay.
7 Ms. Connor, go ahead.

8 MS. SHEEHAN: Your Honor, before we begin, I'd
9 like -- I see Dr. Reagles has demonstrative exhibits with him
10 which I have not seen yet. So I'd like an opportunity to
11 review them.

12 THE COURT: Ladies and gentlemen, I'm going to
13 give you a short break, so we can get this cued up and ready
14 to go so there won't be any interruptions I hope, okay. Go
15 ahead. Don't speak about it, don't let anybody talk to you
16 about it, let me know if they do.

17 (Jury Excused, 1:34 p.m.)

18 THE COURT: Okay. Ms. Connor, if you could,
19 I'm assuming that the blowup exhibits that Dr. Reagles has
20 brought with him are part of some discovery that has already
21 been provided but if you could allow counsel, go over that
22 with her, that would be helpful.

23 MS. CONNOR: Absolutely.

24 THE COURT: Dr. Reagles, if you'd like to step
25 down, you can, sir.

1 THE WITNESS: Very good, thank you.

2 THE COURT: You don't have to stay there. And
3 thank you for scrambling to get here, I appreciate it.

4 THE WITNESS: That's quite all right.

5 (Whereupon a recess was taken from 2:35 p.m.
6 to 2:55 p.m.)

7 (Open Court, Jury Out.)

8 THE COURT: Okay, Ms. Sheehan, did you have an
9 opportunity to go through all the exhibits?

10 MS. SHEEHAN: I did, your Honor.

11 THE COURT: Very well.

12 MS. SHEEHAN: Thank you.

13 THE COURT: For the record, Dr. Reagles is
14 going to be qualified as an expert to testify, and we're
15 going to proceed, we're going to bring this jury out here,
16 okay.

17 MS. CONNOR: Your Honor, just before we bring
18 the jury, we took the liberty of moving the podium to here.

19 THE COURT: You mean the easel?

20 MS. CONNOR: Easel, rather. And we thought
21 that it would be easier than have the jury turned looking at
22 the exhibits and we have a microphone available if
23 Dr. Reagles needs it which we don't think he will, but there
24 is one.

25 THE COURT: You project well.

1 THE WITNESS: I try.

2 THE COURT: All right.

3 MS. SHEEHAN: Your Honor, I won't be able to
4 see it.

5 THE COURT: That's true, but you can go over
6 and stand by the door over there and watch everything she's
7 doing. Okay? That works. Just bring your notepad with you
8 if you need to or have the young guy over there keep notes
9 for you. Okay. Are we ready? All right. Please bring the
10 jury in.

11 (Jury Present, 2:56 p.m.)

12 THE COURT: Okay, ladies and gentlemen, we're
13 ready to proceed, Ms. Connor's direct examination of
14 Dr. Reagles, go ahead.

15 MS. CONNOR: Thank you, your Honor.

16 CONTINUED DIRECT EXAMINATION BY MS. CONNOR:

17 Q Dr. Reagles, did there come a time when you
18 were asked to evaluate the matter of Ms. Penny Collins?

19 A Yes.

20 Q And what were you asked to do, please?

21 A I was asked to become familiar with who is
22 Penny Collins, her family background, her educational
23 history, her work history, her health history, I was asked to
24 become familiar with her eventual employment with the
25 New York State Department of Correctional Services, I was

1 asked to become familiar with the incidents that eventually
2 precipitated the diagnosis of either adjustment disorder with
3 depressed mood or as it eventually became known as
4 post-traumatic stress disorder. I was asked to become
5 familiar with the manifestations of that disorder, and what
6 provoked those manifestations, and that as related to her
7 repeated efforts to attempt to return to work as a
8 corrections officer. Once she no longer worked as a
9 corrections officer, which would have been approximately
10 May 28th of 2008, I was asked to become familiar with the --
11 her efforts to find other employment which is essentially a
12 requirement under the law that she do what she can to get
13 back into employment, so I looked at that whole process. And
14 essentially, on the basis of that process, was I able to form
15 opinions related to the objectives that I was given when I
16 was retained.

17 Q Now in this process that, of evaluating
18 Ms. Collins, what information did you consider?

19 A What I considered, her family background, just
20 as a context for who she was and where she developed, she
21 grew up down in Sullivan County, Monticello, if you know
22 Monticello has a beautiful racetrack down there, lovely
23 community, that, then I also considered her educational
24 background, that she graduated from high school in 1979 from
25 Fallsburg High School with a Regents degree, Regents degree

1 suggests a higher level of academic achievement of course as
2 contrasted with a local diploma. Continuing on with
3 educational history, she completed a two-year associate's
4 degree, and also eventually completed a Baccalaureate degree
5 in theology in 1995, and then more recently, she has
6 completed a master's degree in marriage and family counseling
7 from Liberty University.

8 MS. SHEEHAN: Your Honor, it appears that the
9 witness is reading from something.

10 THE COURT: Okay.

11 MS. SHEEHAN: And it's not in evidence.

12 THE COURT: Dr. Reagles, do you have something
13 in front of you?

14 THE WITNESS: Yes, this is essentially my
15 file, my notes.

16 THE COURT: Report?

17 THE WITNESS: The report is part of this file.
18 Part of this binder, I should say.

19 THE COURT: Is that something you've received?

20 MS. CONNOR: She's received a copy of the
21 report, your Honor.

22 THE COURT: Okay. And Dr. Reagles, is it
23 going to assist you in your testimony to refer to the -- your
24 documents that you have there?

25 THE WITNESS: Surely, yes.

1 MS. SHEEHAN: He said notes, is the report the
2 one that was updated yesterday afternoon?

3 MS. CONNOR: Yes, your Honor.

4 MS. SHEEHAN: I'm asking Dr. Reagles if that's
5 what he has in front of him.

6 THE WITNESS: It is.

7 MS. SHEEHAN: I won't object to the report but
8 the notes. I won't object to the report, but I object to the
9 notes.

10 THE COURT: Have the notes been turned over?

11 MS. SHEEHAN: No, your Honor.

12 MS. CONNOR: No, they were not requested, your
13 Honor.

14 THE COURT: Okay.

15 THE WITNESS: Why don't we mark my file.

16 THE COURT: Go ahead and mark it.

17 MS. CONNOR: We can do that.

18 THE COURT: We'll take it, go ahead. Lay the
19 foundation. We'll get it into evidence and then you can have
20 a look at it.

21 MS. SHEEHAN: Get a copy?

22 THE COURT: Have a look at it. I'm not going
23 to wait for a copy to be made, okay.

24 MS. CONNOR: This would be Plaintiff's 82, I
25 believe.

1 THE COURT: What's the exhibit number?

2 MS. CONNOR: 82, your Honor.

3 THE COURT: Thank you. Ms. Connor, please
4 start there and ask the doctor to identify Exhibit 82, its
5 contents.

6 Q Yes. Dr. Reagles, you have in front of you
7 what has been marked as Plaintiff's Exhibit 82, would you
8 please identify that for me if you can?

9 A Yes, this is essentially my file on the Penny
10 Collins matter. It includes my interview notes, it includes
11 the documents that I responded to earlier from defense
12 counsel with regard to what documents I had. There are
13 certain legal documents, there are medical records, there are
14 some salary schedules, there are contracts, pertaining to
15 Ms. Collins' employment with the -- I'm going to call it the
16 Department of Corrections, but I know it's Correctional
17 Services but just for shorthand. And then there's
18 information in there about the retirement fund. There's some
19 other documents, Workers' Compensation, that sort of thing.

20 MS. CONNOR: I wasn't going to offer it, your
21 Honor.

22 THE COURT: I don't think that you need to
23 offer it at this point, but Dr. Reagles, is it going to
24 assist you in your testimony to refer to that binder?

25 THE WITNESS: Yes.

1 THE COURT: Your notes and reports?

2 THE WITNESS: Yes, I think there are
3 sufficient number of details in this matter that I would be
4 uncomfortable relying on my memory.

5 MS. CONNOR: Your Honor, I ask that the
6 witness be allowed to use Plaintiff's 82 in his testimony.

7 THE COURT: It's going to be granted. Would
8 you please take the binder and have counsel flip through it
9 so she can verify what's there.

10 I know I sound like a broken record, but if
11 anybody wants to stand up and stretch, please, I want you to
12 be comfortable. Take advantage of these opportunities.

13 (Pause in Proceedings.)

14 THE COURT: Ladies and gentlemen of the jury,
15 feel free if anybody wants to go in the jury room, use the
16 facilities or anything else, that jury room in back is fine,
17 okay. While we're waiting here. I'm going to try and keep
18 as many of you here as I can so we can try and keep moving.

19 Ms. Sheehan and Mr. Andrews, if you could,
20 just make a quick preliminary view of that binder, I will
21 give you an opportunity before cross-examination to get it
22 back again, if you want to examine anything more closely
23 before cross-examination.

24 MS. SHEEHAN: Your Honor, may we approach side
25 bar.

1 THE COURT: You may.

2 (At Side Bar.)

3 MS. SHEEHAN: Your Honor, what we were hung up
4 on is there's a whole list of medical records that we never
5 received, and it goes beyond range, which this goes back to
6 the 2001.

7 MS. CONNOR: It's in the binder you have, it's
8 the --

9 MS. SHEEHAN: Never received the medical
10 records.

11 MS. CONNOR: The document --

12 MS. SHEEHAN: We never received the medical
13 records, except for Dr. Alley, Dr. First, who was our
14 witness.

15 MS. CONNOR: You didn't request the records.

16 MS. SHEEHAN: Oh, I disagree. I'm sure we --

17 MS. CONNOR: You didn't.

18 MS. SHEEHAN: We only asked for one set of
19 medical.

20 MS. CONNOR: You didn't request them. I --

21 THE COURT: Okay. You're going to have a full
22 opportunity to examine them before you have to do
23 cross-examination. Okay. And you know, discovery at this
24 point is closed, this case has been ready for trial for some
25 period of time, so if there isn't -- you make a catalog of

1 what you don't have, and Ms. Connor can tell us what was
2 supplied and we'll go from there.

3 MS. SHEEHAN: And your Honor, we didn't even
4 know this when we received the report before we deposed him.
5 We didn't have these medical records at the time we deposed
6 him, we aren't aware of them.

7 MS. CONNOR: Where are they in the binder?

8 MS. SHEEHAN: It's not my binder. He said he
9 reviewed --

10 MS. CONNOR: He said everything.

11 THE COURT: One at a time, please, one at a
12 time.

13 MS. CONNOR: What isn't in the binder you're
14 talking about?

15 MS. SHEEHAN: All the medical records for
16 everyone except Dr. Alley and Dr. First.

17 MR. ANDREWS: Dr. Alley, the date range is
18 different than what we have, I think.

19 MS. SHEEHAN: It is, this goes back to 2001.

20 MS. CONNOR: You had that, I sat in the office
21 with Tim Mulvey, all those were on his lap, he did an
22 extensive deposition of Dr. Alley. There's no way you
23 didn't -- you can say you did not have that.

24 MS. SHEEHAN: Going back to 2001?

25 MS. CONNOR: Absolutely.

1 THE COURT: All right. Well, we're not going
2 to argue about this now. If you have some records that
3 indicate what was turned over that you can show me either at
4 the end of the day or first thing tomorrow morning, that
5 would be good. Meantime, you'll have an opportunity to
6 review this stuff before you have to cross-examine, okay.
7 We're going to proceed with the direct examination now. And
8 you can, you know, ask to see whatever is in this binder at
9 any point, okay.

10 MS. SHEEHAN: Can we please see it right after
11 he finishes his direct, we'll --

12 MS. CONNOR: I don't have them with me, I mean
13 obviously, I don't, I don't have anything other than what's
14 in this binder with me. I am not carrying around my
15 discovery material to court.

16 MR. ANDREWS: So this is yours or this is his?

17 MS. CONNOR: This is his. But I had no idea
18 that there was an issue so I'm not carrying discovery
19 material.

20 THE COURT: Okay, we'll get it addressed.

21 MS. SHEEHAN: Thank you, your Honor.

22 THE COURT: Okay.

23 MS. SHEEHAN: We're going to hand this back to
24 you, look at it after.

25 (Open Court.)

1 THE COURT: Okay. We're going to proceed with
2 the direct examination of Dr. Reagles. Ms. Connor, if you
3 could.

4 MS. CONNOR: Before -- could you read the last
5 question back, please. Before the binder was marked.

6 (The requested portion of the testimony was
7 read.)

8 Q Did you consider any other information?

9 A That was the principal information. I did
10 look at her prior medical history, but I did not find any
11 medical conditions that prevented her from working fully and
12 completely in the competitive labor market including as a
13 corrections officer.

14 Q Now, what did you learn about Ms. Collins'
15 work history?

16 A Well, I learned that she's always been very
17 enterprising, worked in high school, from very early age,
18 after graduating from high school, she joined the U.S. Army,
19 and was in the Army for two years, achieved the rank of E3,
20 she was a public information specialist, she -- they trained
21 her, had a short course in journalism and wrote for military
22 publications. In 1981 after she left the service she worked
23 as an office clerk for a temporary agency, she has worked as
24 a retail manager, she worked for a time up at Kutshers
25 Country Club up in the Adirondacks as a valet. 1981 to '93,

1 she worked as owner, manager of a retail gift establishment.
2 '95 to '96, she worked as a youth education director for a
3 church in Alabama. And then late 1996 she returned to
4 New York, she studied at Rockefeller College, College of
5 St. Rose in Albany, University of West Virginia. 1999, she
6 became a probation officer in Sullivan County, working with
7 troubled youth, PINS, persons in need of supervision. And
8 then in 1999 to 2002, she worked as a title clerk for an
9 abstract company in Monticello. And then in 2002, she went
10 to the Department of Correctional Services training academy
11 in Albany, and in October of 2002, she received her first
12 assignment as a corrections officer at Sing Sing prison in
13 Ossining, New York. And then I looked at the various
14 assignments that she had as a correctional officer, up until
15 the date of her last employment in May of 2008.

16 Q Now, Dr. Reagles, did I ask you to become
17 familiar in the preparation of your report with Ms. Collins'
18 work as a correction officer?

19 A Yes, you did.

20 Q And did I also ask you to become familiar with
21 the incidents with respect to Ms. Collins being subjected to
22 sexual harassment in her work as a corrections officer?

23 A Yes, you did.

24 Q And what did you learn about these incidents?

25 A Well, I read that they were rather crude,

1 graphic examples of people behaving badly, if you will. But
2 more importantly, to me, was the manifestations for
3 Ms. Collins, the development of anxiety, depression, sleep
4 disorder, that those symptoms were brought to the attention
5 of Dr. Alley who eventually treated her for the symptoms of
6 what he initially diagnosed as an adjustment disorder with
7 depressed mood, but subsequently changed his diagnosis to
8 post-traumatic stress disorder. And I learned of the
9 psychotropic medications that he gave, prescribed for
10 Ms. Collins, including benzodiazepine, also, almost always
11 was Ambien for the sleep disorder. I learned about the,
12 essentially the -- from his office notes and from her account
13 of what had happened, that the events at work, the incidents
14 at work, were of sufficient severity that they eventually
15 caused her to take a leave from work. She made several
16 attempts to go back to work but every time she did, as is
17 characteristic of this phenomenon of post-traumatic stress
18 disorder, an individual goes back into the environment in
19 which the disorder was provoked, do the symptoms become more
20 intensified.

21 Now, I should tell you that Dr. Dougherty and
22 I, the clinic, we had contracts with the Veterans
23 Administration and treated veterans from the Vietnam-era
24 conflict as well as more contemporary conflicts, all of them
25 were there for post-traumatic stress disorder and I know that

1 of this phenomenon, the flashbacks, the hypervigilance, the
2 exposure to events or circumstances that are similar to the
3 events in which the trauma occurred, that provokes this
4 post-traumatic stress disorder reaction, and the descriptions
5 that I read about in Dr. Alley's reports and that I got from
6 Ms. Collins were certainly consistent with that phenomenon as
7 I had come to understand it from the Vietnam-era veterans and
8 others.

9 And so what -- what I learned eventually was
10 that the symptoms were provoked each time she went back to
11 the correctional institution, and that eventually Dr. Alley
12 concluded that it was no longer in her best interest to
13 continue working as a corrections officer, and in late May of
14 2008, her employment ceased with the New York State
15 Department of Correctional Services.

16 Q Now, in the course of preparing your report on
17 her damages, did I ask you to become familiar with how her
18 post-traumatic stress disorder was treated?

19 A Yes.

20 Q And what did you learn about that treatment?

21 A Well, I've already mentioned that she'd been
22 seen by Dr. Alley, he was the primary care physician and he
23 dealt with it, not only with some education and brief
24 counseling like office visits, but also the medications. He
25 referred her for counseling. I am aware that she did go for

1 counseling on at least two if not three occasions.
2 Unfortunately the counselors were men, and they -- the
3 perpetrators of these incidents of sexual harassment were
4 also men, and so she was very uncomfortable.

5 MR. ANDREWS: Objection, your Honor. If you
6 could ask the witness to characterize them as allegations of
7 sexual harassment, he doesn't know what happened.

8 THE COURT: I think that's a reasonable
9 request.

10 THE WITNESS: Surely.

11 THE COURT: Counsel, if we could keep it in
12 that --

13 THE WITNESS: Absolutely.

14 THE COURT: -- framework, please.

15 A Right. That she did seek counseling on two
16 occasions but they were, they were very brief counsel. One
17 was for only two sessions, the other was only one session but
18 Dr. Alley kept recommending counseling services to her. And
19 so essentially that's how the -- how the post-traumatic
20 stress disorder was dealt with from the records that I
21 reviewed and from Ms. Collins' accounts of what happened.

22 Q Now Dr. Reagles, based on your review of all
23 this information, do you have an opinion of whether
24 Ms. Collins' PTSD precluded her from working as a corrections
25 officer?

1 A I do.

2 Q And what is that opinion?

3 A It's my opinion that the -- the circumstances
4 were such that whether she attempted to return to work in the
5 correctional institution, the symptoms of post-traumatic
6 stress disorder were provoked to the point that she needed
7 more intensive medical services, and I'm in agreement with
8 Dr. Alley that the post-traumatic stress disorder precludes
9 her from working presently or ever as a correctional officer.

10 Q Now Dr. Reagles, did I also ask you to study
11 the nature of the earnings and benefits that Ms. Collins
12 would have enjoyed had she continued to be employed by the
13 New York State Department of Corrections?

14 A Yes.

15 Q And do you have an opinion of whether
16 Ms. Collins experienced a loss of earnings and benefits as a
17 result of being unable to work as a corrections officer?

18 A I do.

19 Q And what information did you consider in
20 arriving at that opinion?

21 A What I considered was the -- the earnings that
22 she would have been entitled to as if she had continued to
23 work as a corrections officer. I also considered eventually
24 what her capacity to work in some other setting, some other
25 occupation, some other profession than as a corrections

1 officer. And essentially looked at the difference between
2 the two to make a determination of an estimate of the
3 economic consequences of her lost capacity to work as it
4 pertains to wages and lost retirement benefits. I assumed
5 that the health insurance benefits that she enjoyed as
6 corrections officer would be offset by health insurance that
7 she would have gotten from some employment in the future or
8 from her being on her husband's health insurance policy when
9 he was working. Now I eventually learned that he was -- he
10 used to be the helicopter pilot for the Air 1 rescue in this
11 county and -- but eventually had an injury that prevented him
12 from doing that so he lost that job, lost those benefits.
13 But the point is that I did not take into consideration any
14 loss of health insurance. But I did consider the difference
15 in the contributions to the retirement fund or -- by virtue
16 of her employment with New York State Department of
17 Correctional Services, versus what might be provided in some
18 future employment, not for the state.

19 Q Now, in arriving at this, at your professional
20 opinion, did you make any assumptions?

21 A Well, one which was if I -- the assumption was
22 that the health insurance benefits would be offset, and so
23 that was the other assumption that I made.

24 Q And the others, yes?

25 A The other assumption I made is that if these

1 incidents had not occurred, or as alleged to have occurred,
2 and if the post-traumatic stress disorder had not been the
3 diagnostic manifestation of these alleged incidents, that
4 Ms. Collins would have continued to work for the Department
5 of Corrections for her career which she aspired to and
6 ostensibly was an entirely satisfactory worker until these
7 incidents, these alleged incidents began to occur.

8 Q Now as part of your study, did you examine
9 Ms. Collins' earnings before and at the time of her
10 unemployment as a corrections officer?

11 A Yes, I did.

12 Q And what did you learn about her earnings
13 prior to her employment as a corrections officer?

14 A This might be a time when I could use my first
15 chart to explain that.

16 Q Did you bring any visual aids with you today?

17 A Yes, I did.

18 Q Great. Okay.

19 MS. CONNOR: Your Honor, with your permission,
20 may he?

21 THE COURT: He may step down, go ahead.

22 THE WITNESS: Thank you.

23 MS. CONNOR: Your Honor, do we want to mark
24 these?

25 THE COURT: Yes. We do. They're being used

1 and shown to the jury, we're going to mark them. Mark them
2 as like whatever the corresponding exhibit number is, as that
3 same number A.

4 MS. CONNOR: Okay. Yes.

5 THE CLERK: No, no, no, he means that's
6 contained within 81, isn't it?

7 MS. CONNOR: Yes, this is -- well, he'll
8 testify.

9 THE COURT: It's 81A then.

10 MS. CONNOR: I understand.

11 THE COURT: So there's corresponding numbers
12 so they can match them up easily.

13 MS. CONNOR: How many are there?

14 THE WITNESS: There are 11.

15 THE COURT: Why don't we do one at a time so
16 we can keep moving.

17 MS. CONNOR: I'm going to put Plaintiff's --
18 what's been marked as Plaintiff's Exhibit 81A on the easel
19 for the witness.

20 Q Now I think the question was, what did you
21 learn about her earnings prior to her becoming a correction
22 officer? And if you can answer that, please.

23 A Not prior to her becoming a corrections
24 officer.

25 Q I'm sorry.

1 A Her earnings as a corrections officer.

2 Q Yes, prior to becoming unemployed as a
3 corrections officer, I left a word out and I apologize.

4 A So recall that Ms. Collins became a
5 corrections officer in late 2002. So her earnings in that
6 year, this is partial year, slightly more than \$4,000. Now,
7 2003, '4, '5, '6, '7, and into 2008, recall that I said that
8 in late May of 2008 was when she last worked as a corrections
9 officer. Well, here we have -- we have four years of full
10 earnings, almost 38,000 in 2003, 42 and a half thousand in
11 '04, 44,000 in '05, 46,000 in '06, but now we have these
12 periods of some unpaid medical leave, interspersed with her
13 attempts to go back to work for brief periods of time and so
14 that's why even though she was still employed in 2007 and
15 2008, as a corrections officer, her earnings were
16 substantially less than they were during these full years.

17 Now I also included on this chart, even though
18 it says earnings history as a corrections officer, of what
19 happened to her once she became unemployed by the Department
20 of Corrections. And recall that I said that she was -- that
21 she completed a master's degree in marriage and family
22 counseling. Well, one of the things she was doing during
23 this period of time was working on that degree. So her
24 earnings in 2009, this is actually again some leftover
25 Department of Corrections entitlement of some sort, I wasn't

1 able to identify what it was, might have been unused sick
2 leave or vacation leave or something like that. In 2010,
3 2010, the year of the Census, and she worked as a Census
4 worker for a brief period of time, earned slightly more than
5 \$1,800. And in 2011, this is after her -- she and her
6 husband relocated to Crossville, Tennessee, where she was
7 fulfilling the requirements, the internship requirements,
8 supervised work experience as a marriage and family counselor
9 which is necessary for her to become licensed as a marriage
10 and family counselor in Tennessee. She receives \$30 per
11 individual visit with a client, but even though she works
12 about 25 or 30 hours a week, she earns about \$300, so she has
13 about 10 patients a week so she's earning about \$300 a week.
14 So for 2011 up until about today, I estimate her earnings at
15 slightly more than \$2,900. And so this is, this is the
16 earnings history, if you will, that we're going to use --
17 actually I misspoke. This -- these were her actual earnings
18 in 2011. You will see another, another chart in 2012 that
19 estimated earnings in 2012.

20 Q So these are based on actual numbers up
21 through 2011?

22 A Yes, these are actual numbers supported by
23 the -- either the tax returns, 1099s, W-2s, that sort of
24 thing.

25 Q Thank you. Probably -- might ask you to walk

1 a little bit but if you go back and have a seat, we'll do
2 that.

3 THE COURT: I want you to at least put it down
4 so everybody can see the witness, okay.

5 Q Now Dr. Reagles, are you familiar with the
6 term earnings capacity?

7 A Yes.

8 Q And what is that term?

9 A Well, earnings capacity is distinct from
10 earnings history. Earnings capacity is the potential to work
11 and to earn. So you know, and it may be different than an
12 individual's actual earnings history. I'll give you an
13 example. Let's suppose that a college student is about to
14 graduate from college, and before their graduation they have
15 a horrible accident and are maybe unable to work ever again.
16 Well, it wouldn't be fair to make a determination of their
17 lost earnings capacity on the basis of the work that they've
18 done up until that point, in other words, as a -- almost a
19 college graduate that had a lot of potential, had a lot of
20 capacity, and so that's the distinction between earnings
21 capacity and actual earnings history.

22 Q Okay. And do you have an opinion of
23 Ms. Collins' earning capacity at the time of her unemployment
24 beginning in May 2008?

25 A Yes, I do.

1 Q And what information did you consider in
2 arriving at your opinion concerning that?

3 A Okay. That information is contained on chart
4 number 2, and it is essentially the salary schedule
5 pertaining to the -- essentially the union contracts that
6 determine how much individuals who work for the Department of
7 Corrections would be paid under the terms of that contract.

8 MS. CONNOR: Okay. Ask the reporter to mark
9 this exhibit, please. The clerk, I should say.

10 THE COURT: How's it been marked, what's the
11 number?

12 MS. CONNOR: It's marked as Plaintiff's 81B,
13 your Honor.

14 THE COURT: Thank you.

15 Q Dr. Reagles, I'm putting up on the easel
16 exhibit that was marked as Plaintiff's 81B and can you
17 identify this, go through it for us, please.

18 A Yes. These are essentially the salaries that
19 correspond to the various grades and in step that pertain to
20 Ms. Collins by virtue of her employment with the Department
21 of Corrections. Now, let's just take a look at the
22 dimensions of this chart. First of all they go from
23 October 2002 up until March 2012, essentially today, as close
24 to today as I could get it. Recall that she went to work for
25 the Department of Corrections back in October of 2002, the

1 contract has what is called a hiring rate and that rate was
2 \$34,742. And then for each year of experience they go
3 through various steps until they get to what is called a job
4 rate, and that's where they essentially run out of steps and
5 what they do is they simply use a percentage factor to
6 increase the salary from one year to the next.

7 And so what we see here is a -- if you look at
8 this, you can see that the salaries increase and increase and
9 so on, up until, if she were employed by the Department of
10 Corrections today, at the grade 14, and the appropriate step
11 would be in excess of \$62,000, and so you could see that the
12 earnings have -- would have increased if she had remained
13 employed by the Department of Corrections.

14 So this, in my opinion, is a reflection of her
15 earnings capacity as a Department of Corrections worker had
16 she not become disemployed by the alleged incidents that
17 precipitated the post-traumatic stress disorder.

18 Q Thank you. And Dr. Reagles, then what is your
19 opinion of Ms. Collins' earning capacity at the time of her
20 unemployment, May 2008 to the present?

21 A Sure. In 2008, we see that the salary that
22 corresponds to her grade and level of experience is \$53,677.
23 Now, today, in 2012, that equivalent amount with the
24 appropriate experience would be in excess of \$62,000.

25 Q Thank you. Now Dr. Reagles, is there a method

1 used by members in your profession to determine the dollar
2 value of Ms. Collins' lost income attributable to her
3 unemployment as an employee of the New York State Department
4 of Corrections?

5 A Yes, there is such a method.

6 Q And what is that method?

7 A Well, it's essentially a taking the salary
8 schedule that pertains to corrections officer with her level
9 of -- with her grade and level of experience, and making
10 projections into the future of what she would have earned had
11 the alleged incidents of sexual harassment not precipitated
12 the post-traumatic stress disorder that has prevented her
13 from working as a corrections officer. That is --

14 Q I'm sorry?

15 A That's part of the equation, part of it, so
16 now we have the expected earnings and benefits as a
17 corrections officer, but from that we're going to subtract
18 what she is still able to do, and what she is still able to
19 earn, and that will -- that difference is essentially called
20 the net loss of earnings capacity. So it's the difference
21 between what she was capable of earning versus what she's now
22 capable of earning, and that difference being the --
23 essentially one of the economic consequences of her inability
24 to work as a corrections officer.

25 Q Now, Dr. Reagles, did you arrive at an opinion

1 of Ms. Collins' lost earnings from the date of her
2 unemployment starting in May 2008 to the present?

3 A Yes, I did.

4 Q And in arriving at this opinion, what
5 information did you consider?

6 A Well, I considered in addition to the salaries
7 that are associated with the grade and step, I also took into
8 consideration the fact that she had earned overtime benefits
9 of \$2,386 per year, consistently during the period of time
10 she was employed as a full-time corrections officer. So I
11 added, I also added in the \$2,386 per year as representative
12 of her capacity to work overtime that had been available to
13 her at the time she was employed as a corrections officer.

14 Q And after considering this information, what
15 is your opinion?

16 A Well, there was one other element of the
17 opinion, and that is, I subtracted from her expected earnings
18 what her actual earnings were for the period of time, from
19 her -- the beginning of her disemployment as a corrections
20 officer, that is when the post-traumatic stress disorder
21 began to take her out of work, and for periods of time for
22 which she was not paid and that goes back to 2007. And so
23 looking at her expected earnings and her actual earnings, I
24 was able to make a calculation of the net loss of earnings
25 for the period from 2007 until today.

1 Q Okay. All right. And --

2 A I think it will become clear once you see the
3 chart.

4 Q And what is your opinion, please?

5 A The opinion is expressed on table 3.

6 Q All right.

7 THE COURT: Let me just guess, 81C.

8 MS. CONNOR: That's correct.

9 THE COURT: Very good.

10 Q Dr. Reagles, I'm showing you what has been
11 marked as Plaintiff's Exhibit 81C, putting it on the easel,
12 and would you please explain your opinion.

13 A Yes. Let's take again, take a look at the
14 dimensions of this table. We have four columns, the first is
15 the year, recall that in 2007, that's when she began to
16 experience an economic loss because she was out of work for
17 periods of time for which she did not get paid. If you
18 remember that table that I showed you earlier, actually the
19 very first one, we see in 2007, earnings of only \$4,339 and
20 about \$5,200 in 2008.

21 MS. CONNOR: Can the record reflect that the
22 witness was referring to Plaintiff's Exhibit P81A.

23 A Fine. So here we see those same actual
24 earnings as reflected in table number 1. Whereas her
25 expected earnings are reflected in this column, and keep in

1 mind again that this column does include that \$2,300 and
2 change in overtime payments. And so the difference between
3 her expected earnings and her actual earnings is the net loss
4 of earnings for each of those years from the date when she
5 began to experience an economic loss up until approximately
6 today. And that total, and this is my opinion, is \$285,255
7 as being the economic consequence of her incapacity to work
8 as a corrections officer versus what she actually earned as a
9 correction officer, as a Census taker and here as the
10 part-time marriage and family counselor while she's
11 fulfilling the work, the supervised work experience to become
12 licensed as a marriage and family counselor in Tennessee.

13 Q Thank you. Now Dr. Reagles, is there a method
14 used by members of your profession by which expected future
15 earnings and benefits of an individual may be determined?

16 A Yes.

17 Q And please describe that method.

18 A Sure. Essentially in a situation like this,
19 where we have a -- we have union contracts for lots of years,
20 so we're able to look at those and so see the kinds of
21 changes that have occurred in wages for people with various
22 grades and at various levels of experience, that becomes a
23 very solid foundation to build upon as contrasted say for
24 somebody who is self-employed where their earnings go up and
25 down from year to year, they may have extraordinary expenses

1 one year and not so many in another year so here we have an,
2 almost an enviable base of information from which to make
3 projections of what the individual would have earned had the
4 alleged incidents of sexual harassment not produced
5 post-traumatic stress disorder to the extent that she
6 couldn't work. Now, from -- again, from that, we're going to
7 subtract what she is capable of doing, capable of earning,
8 going forward into the future so that's the model, if you
9 will.

10 Q And do you have an opinion based on that model
11 of Ms. Collins' expected future earnings had she remained an
12 employee as a corrections officer with the New York State
13 Department of Corrections?

14 A Yes, I do.

15 Q And have you made any assumptions in reaching
16 this opinion?

17 A Yes.

18 Q And what are those assumptions?

19 A Well, one is that these correctional officers
20 will continue to be covered under the contracts between the
21 Civil Service Employees Association and the New York State
22 Department of Corrections. The other assumption that I made
23 is that after 10 years of experience, there was -- there
24 would have been an opportunity for Ms. Collins to have been
25 promoted to the rank of sergeant. She, after only four years

1 of experience, she had passed the qualifying test to be
2 considered for the rank of sergeant. She -- because there
3 weren't any openings, she did not get promoted to the rank of
4 sergeant, but I assumed that as one scenario, she might have
5 been promoted to the rank of sergeant and if she did, her
6 earnings capacity would have changed. It would have
7 increased. And that -- I think that was the only other
8 assumption that I made. So essentially I made the assumption
9 that she would have continued to work as a correctional
10 officer but under another scenario, I made the assumption
11 that she would have been promoted to the rank of sergeant in
12 approximately January of this year, and from that point on,
13 there would have been a different earnings stream to take
14 into consideration.

15 Q Now, in addition to these assumptions, did you
16 consider any additional information?

17 A One other thing I learned was that the
18 contract between CSEA and Department of Corrections,
19 correctional services includes what is called a longevity
20 increase. After individuals have been there for 10 years,
21 they receive an increase in their salary of almost \$9,000.
22 It's \$8,931. And that results in a substantial higher wage
23 than if, than if they did not have that longevity increase.
24 And so that was another piece of information that I took into
25 consideration.

1 Q Any other information that you took into
2 consideration?

3 A Well, the other is the, what we call work life
4 expectancy. In other words, we're making a projection into
5 the future, how long do we make the projection. Some
6 individuals who do these economic calculations will use what
7 is called the full Social Security retirement age, which in
8 her instance would be to age 67. But the Department of Labor
9 publishes tables of work life expectancy, which is comparable
10 to life expectancy in the sense that they tell us how long on
11 the average individuals are likely to remain in the
12 workforce, whereas life expectancy is obviously, if based on
13 gender and age, you can look at that table and see how long
14 on the average an individual would be expected to live. And
15 so that was the other thing that I took into consideration, I
16 had to know how long into the future to make that projection.
17 And what I determined was that for individuals like
18 Ms. Collins, a merely 51-year-old female who at the time she
19 became disemployed from the Department of Corrections had a
20 substantial amount of college education, but less than the
21 Baccalaureate degree at that time, had 12.7 years of work
22 life expectancy. So if you think of it, she's now 50.8
23 years, another 12.7 years takes her to 63.5 years, and
24 that's, in my mind, that was a reasonable expectation of how
25 long she would have worked had the alleged incidents not

1 precipitated PTSD that prevented her from working as a
2 correctional officer.

3 Q Now, are you familiar with the term present
4 value?

5 A Present value, yes, I am.

6 Q And would you please explain to us what that
7 means?

8 A Well, yes. Present value is essentially the
9 answer to the question, how much money do I have to have
10 today, if it can be invested in a relatively secure
11 investment vehicle, will produce a flow of income that, when
12 you take into consideration how, in this instance, wages
13 would also be expected to grow, how much money do I have to
14 have right now that will produce that flow of income if you
15 will. And so that's what present value is. Now why is that
16 important? Well --

17 Q That was my question, I was going to ask you
18 that question. I was going to ask you why is that important
19 in this matter and did you take that into consideration?

20 A You can see it's hard for me to get away from
21 being a professor.

22 Q That's my question.

23 A Ask that rhetorical question.

24 Q That's okay. So what, why, why is that
25 important, the determination of present value, why is that

1 important?

2 A Well, you'll see in the charts that I have, I
3 have both the future value and the present value. And the
4 future value was calculated because under New York State law,
5 if I were presenting this testimony in a New York Supreme
6 Court, the values would be presented as future values and the
7 judge would have the responsibility of reducing them to
8 present value after the trial was over. In federal court,
9 the opposite is true. The testimony is given as present
10 value, it's the answer to the question, what is the estimated
11 sum that would have to be set aside that would approximate
12 the economic consequence of Ms. Collins' incapacity to work
13 as a corrections officer. And so that's what we're going to
14 see on this next chart.

15 Q Now, is there a method by which members of
16 your profession use to determine the present value of future
17 sum?

18 A Yes.

19 Q And what is that method?

20 A Well, it's a method that involves two forces.
21 One is, we know that the -- that the wages are going to
22 increase in their nominal value by such factors as
23 productivity increases, the reflection of a cost of goods and
24 services of the Consumer Price Index. So those, from year to
25 year we're going to see those increases just as you saw in

1 the wage chart that I put up there. Those wages increase in
2 anticipation that it's going to cost more money to buy things
3 in the future. Coupled with that is what is called the
4 discount rate. If you have a sum of money that can be
5 invested, it will return a rate of return which we call the
6 interest rate, but in this particular instance, it's called
7 the discount rate. So one force is going up, another force
8 is coming down, drawing it down, and the net result is the
9 present value of the future estimated loss of earnings
10 capacity.

11 Q And did you use that method to determine the
12 present value of Ms. Collins' expected future earnings?

13 A Yes.

14 Q And do you have an opinion on what -- using
15 that method and what you've described, do you have an opinion
16 on what her future earnings would be?

17 A What her earnings capacity would be?

18 Q Would have been, yes.

19 A Yes, I do.

20 Q And what is that opinion, please?

21 A Well, that's reflected in table number 4. If
22 we could take a look at that.

23 THE COURT: 81D.

24 Q Dr. Reagles, I'm showing you what has been
25 marked as Plaintiff's 81D, placing it on the podium, and

1 would you please explain your opinion?

2 A Let's take a look at the dimensions of this.
3 The period over here is the number of years, and recall that
4 the estimate, the work life expectancy was 12.7 years. The
5 first scenario is under the assumption that she would not
6 have been promoted to a corrections sergeant and all, what
7 she would have done was continued to work as a corrections
8 officer. Had she done that, these would have been the
9 expected salary increases over the duration of the 12.7 years
10 of work life expectancy. Well, notice in the 12th year, the
11 annual salary is slightly more than \$106,000, now we have
12 only 7/10ths of the next year and that's why this figure is
13 77,000 and something. If we added those up, that would come
14 to slightly more than a million dollars. But the present
15 value of that is \$798,026. So what essentially again, what
16 that means is that if this sum of money were invested, it
17 would return these salary amounts over that 12.7-year period
18 of time.

19 The second scenario was that assuming that
20 since she had already passed a qualifying test to become a
21 sergeant, that in approximately January of this year, she
22 would have been promoted to a corrections sergeant, and here
23 are the salary levels that correspond to what sergeants earn.
24 And you can see that they are starting out at approximately
25 \$12,000 more per year. And those total, if I added those up

1 over the 12.7 years, \$1,252,010, the present value of that
2 being \$917,710. So my opinion is that the present value of
3 her future earnings capacity is reflected by either the
4 scenario in which she remains a corrections officer,
5 \$798,026, or the alternative, in the event that she had been
6 promoted to sergeant, \$917,710.

7 Q Thank you. Dr. Reagles, are you familiar with
8 the term residual earnings capacity?

9 A Yes, I am.

10 Q And what does that mean?

11 A Well, residual, if you think of the word
12 residual, it's what's left, and in vocational rehabilitation,
13 we work with residual functional capacity. In other words,
14 if someone has a disability, there are certain things they
15 can't do but there are other things that they can do, and
16 what they can still do is called residual functional
17 capacity. Individuals who still are able to work in the
18 competitive labor market even though they have some
19 limitations have what we call residual earnings capacity.
20 And so what I did in this instance was to look at what
21 Ms. Collins' residual earnings capacity is, as a marriage and
22 family counselor. Now that's not all she can do, but that's
23 what she's going to become licensed to do and that is the
24 avenue that probably has the greatest chance of success. I
25 determined that she could have been a mental health

1 counselor, she could have been like a social service worker,
2 a child and family caseworker, human services assistant,
3 community and social services worker, she could -- she also
4 could have become director of religious activities or
5 education as she had done in the past. Those were some of
6 the other occupations that I was able to identify that were
7 commensurate with her interests and her academic preparation.
8 So essentially, on the basis of those occupational titles was
9 I able to form an estimate of what her residual earnings
10 capacity was and is.

11 Q And did you form an opinion of the present
12 value of her future residual earnings capacity?

13 A Yes, I did.

14 Q Okay. And what is that opinion?

15 A That is reflected in table number 5.

16 Q Dr. Reagles, I'm showing you what has been
17 marked as Plaintiff's 81E, chart, placing it on the podium
18 and would you please explain your opinion.

19 A Yes. If you recall, I said that Ms. Collins
20 is presently working as a part-time marriage and family
21 counselor being paid \$300 a week. She has another 14 months
22 to go to become licensed as a marriage and family counselor.
23 So for the next 12 months her annual income is estimated at
24 \$15,600. Upon becoming licensed and going to work as a
25 marriage and family counselor in the Crossville, Tennessee

1 area, the starting salaries average approximately \$27,121.
2 These -- this starting salary is expected to grow at
3 approximately 3 percent per year and if we do that, then we
4 find that over the 12.7 years of future work life expectancy,
5 the future value is almost \$400,000 but the present value of
6 her residual earnings capacity is \$283,770.

7 Q And now why, briefly, okay, why is the present
8 value lower than the -- than the subtotal above it?

9 A Well, again, this is the amount of money that
10 you would have to invest that would produce this flow of
11 earnings over the 12.7 years of work life expectancy.

12 Q Thank you. And Dr. Reagles, are you familiar
13 with the term net loss of earnings capacity?

14 A Yes, I am.

15 Q And what does that mean?

16 A Well, it's essentially the difference between
17 one's unimpaired earnings capacity and their impaired
18 earnings capacity. It's essentially the difference between
19 her expected earnings as a corrections officer and her
20 earnings capacity as a marriage and family counselor.

21 Q And did I ask you to calculate an estimate of
22 the present value of Ms. Collins' net loss of earnings
23 capacity?

24 A Yes, you did.

25 Q And did you form an opinion as a result of

1 that of the present value of her net loss of earnings
2 capacity?

3 A Yes.

4 Q And what is your opinion?

5 A That is reflected on table number 6.

6 Q Dr. Reagles, I'm placing before you
7 Plaintiff's Exhibit 81F, and I'd ask you to look at that and
8 explain --

9 A Sure.

10 Q -- what your opinion is, please.

11 A Okay. Again, the dimensions of this, her
12 predisability or her unimpaired earnings capacity, and what
13 I'm going to do is just take my marker and I'm going to mark
14 right through this row, because we're not concerned about
15 future values here, we're only concerned about present
16 values. So we have the difference between her unimpaired or
17 predisability expected earnings, and her residual earnings
18 capacity, that's essentially the difference between table 4
19 and table 5.

20 Now notice that I have a range here, \$798,026
21 to \$917,710. And you'll recall the reason for that is,
22 scenario number one, almost 800,000, is if she continued to
23 work as a corrections officer, scenario number two is in the
24 event she got promoted to a sergeant, then we have this
25 higher value. Her residual earnings capacity as I just

1 showed you on table number 5 was calculated at \$283,770 so
2 the difference between the two ranges from \$514,256, assuming
3 she would have continued to work as a corrections officer, to
4 \$633,940, in the event that she had been promoted to
5 sergeant. Okay. So that's my opinion of the economic
6 consequence of her lost capacity to work as a corrections
7 officer.

8 Q Thank you. Now Dr. Reagles, in describing the
9 method and determining the loss of earnings capacity, you
10 included the value of fringe benefits as an element of loss
11 but at this point so far you've not discussed fringe
12 benefits. Is there a reason for that?

13 A Well, again, there is, and again, keep in mind
14 I said that I assume that any health benefits would have been
15 offset by other alternatives, other alternatives that she
16 might have had to have those health insurance benefits
17 covered by some other source, either her husband's employment
18 or her future employment. And essentially what that left us
19 with then was the difference between the anticipated
20 contributions to retirement fund, the retirement fund in the
21 instance of which she had been -- remained a corrections
22 officer, or what the anticipated retirement benefits would be
23 from future employment as a marriage and family counselor or
24 in some other similar capacity.

25 Q Thank you. And did I ask you to examine the

1 retirement fund contributions that would have been made by
2 the New York State Department of Corrections as her employer
3 and compare them with any actual or anticipated retirement
4 fund contributions from any employer subsequent to her
5 unemployment from the Department of Corrections?

6 A Yes.

7 Q And do you have an opinion of the present
8 value of the dollar difference if any between the New York
9 State Department of Corrections retirement fund
10 contributions, and such contributions from other employers
11 after her unemployment from the New York State Department of
12 Corrections?

13 A Yes, I do.

14 Q Thought you would.

15 A Long question.

16 Q And what information did you consider in
17 forming that opinion?

18 A Well, what I considered was the mandatory
19 contribution to the New York State retirement fund by virtue
20 of her being a member of CSEA, and the contracts that pertain
21 to such employment, versus the anticipated contributions from
22 a private employer to some other retirement fund of some
23 sort. Certainly not the New York State retirement fund.

24 Q And what is your opinion of that?

25 A Well, that opinion is reflected in two tables,

1 table 7, and table number 8.

2 Q Let's start with 7. Do you need them posted
3 simultaneously?

4 A No.

5 Q Okay. We'll start with 7 then.

6 A No, I think it's more appropriate that they're
7 not.

8 Q Okay. Dr. Reagles, I'm showing you what's
9 been marked as Plaintiff's Exhibit 81G and would you look at
10 it, please, and explain what your opinion is.

11 A Yes. This is the period of time when she
12 began to be restricted in her capacity to work as a
13 corrections officer back in 2007 up until the date of the
14 present. The only potential contribution to retirement fund
15 would have been under the circumstances where she had
16 continued to work as a corrections officer. She has not
17 worked in any other capacity from that date in 2007 until
18 today where she is receiving any kind of contributions to a
19 retirement fund. I anticipate that in the future, once she
20 becomes licensed in marriage, family counselor, her
21 employment will include contribution towards some sort of
22 retirement fund, an IRA, a SEP, whatever. The annual amounts
23 for the respective years, you can see in 2007 would have been
24 \$4,233, slightly more in '08 and so on. The total here being
25 \$24,259.

1 Now, one of the things that I did to make this
2 as conservative as possible, I did not assume that these
3 funds could have been invested and return some interest, if
4 you will, on the -- whatever investment vehicle might have
5 been chosen, perhaps even a variety of investment
6 alternatives. If I had done that, this number would have
7 been quite a bit larger, wouldn't it of?

8 Q What did you do instead?

9 A All I did was to determine the estimated
10 amount of the actual contribution to the fund. We know that
11 that's what would have been lost, we can have confidence in
12 that. We can have less confidence if I had made some sort of
13 an estimate of how much rate of return there would have been
14 on some investment alternatives during that period of time.

15 What happened in 2008, 2009? I don't know
16 about you, but I had a small retirement package from
17 Wisconsin when I worked there, my benefits actually went
18 down. So I thought it was unfair to try to discern what the
19 rate of return on investment of this sum of money would have
20 been during this period of time. So -- but this is
21 essentially an estimate of the contributions, not the
22 contributions plus rate of return.

23 Q Now you mentioned table 8 as well.

24 A Yes.

25 Q Let's do this.

1 A Marked?

2 Q Yes, I marked it. Dr. Reagles, I'm showing
3 you what's been marked as Plaintiff's Exhibit P81H, and would
4 you explain your opinion using this as well.

5 A Yes. Here we have again the two scenarios,
6 one if she'd continued to work as a corrections officer,
7 these would be the future sums, the future annual sums that
8 would have been contributed to the New York State retirement
9 fund based upon the formula in the contract. And you can see
10 that if she'd continued to work as a corrections officer, the
11 present value of those sums would be \$63,842. If she had
12 been promoted to a sergeant, salary would have been higher,
13 therefore the contribution would have been higher, the
14 present value of that is \$73,412. I assume that as a
15 marriage and family counselor, her employer, some future
16 employer, would have been making contributions to a
17 retirement fund of some sort, and based upon the Department
18 of Labor and Statistics and the survey conducted by the U.S.
19 Chamber of Commerce, that amount is estimated at 8 percent
20 per year, so that the employer's contribution to some
21 investment, or some retirement fund is estimated at 8 percent
22 of the gross salary. And you can see what that amount is for
23 each of the respective years going forward, that total, the
24 present value of that is \$22,702. So the present value of
25 the future loss contributions to the retirement fund range

1 from \$41,140 to \$50,715.

2 Q Okay. Now, Dr. Reagles, were there any other
3 economic consequences of Ms. Collins' unemployment from the
4 New York State Department of Corrections that you considered?

5 A Yes.

6 Q And what were they?

7 A This is a provision of the CSEA contracts of
8 what is called terminal leave benefits, and individuals who
9 have 15 or more years of service, and certainly at the
10 anticipated date of retirement, that age, approximately 63,
11 she would have had more than 15 years of experience, that
12 individuals receive a, what's called a terminal leave benefit
13 that is based upon the daily value of their work times 21
14 days, all right. So at the time of retirement, there would
15 be a contribution to the individual called a terminal leave
16 benefit that is 21 times the daily rate of their employment.

17 Now how do you determine daily rate of
18 employment? The CSEA and Department of Corrections uses 260
19 workdays per year. So you take the annual salary, divide it
20 by 260 days, that gives you the daily rate. You multiply
21 that by 21, which is 21 days, then that gives you the amount
22 of the terminal leave benefit. Not a big sum, but it is part
23 of the contract.

24 Q And did you make a determination of the
25 economic value of that terminal leave benefit had Ms. Collins

1 been able to continue working for the New York State
2 Department of Corrections?

3 A Yes, I did.

4 Q And what is that, what is your opinion of
5 that?

6 A That is on chart number 9.

7 Q I'm showing you what's been marked as
8 Plaintiff's Exhibit P81I. And please explain your opinion.

9 A Let me move over here, please. We have two
10 scenarios again. Scenario one is if she had continued to
11 work as a corrections officer, not been promoted to sergeant.
12 At the time of her retirement, at the end of her work life
13 expectancy, the daily value of her salary would be \$426.04,
14 times 21 days gives us \$8,947, the present value of which is
15 slightly less than \$5,000. \$4,842. In the event that she
16 had been promoted to a sergeant, the present value of those
17 21 days of terminal leave benefit would be \$5,505.

18 Q Thank you very much. Now, did I also ask you,
19 Dr. Reagles, to conduct an investigation into the nature,
20 extent and present annual cost of the health-related services
21 Penny Collins will require in the future?

22 A Yes, you did.

23 Q And what did I ask you specifically to do?

24 A Essentially to make a determination from the
25 medical records that were provided to me, based upon

1 standards of care within the industry, to determine the
2 estimated cost of the future health-related goods and
3 services that are related to the post-traumatic stress
4 disorder that was allegedly incurred as a result of the
5 alleged incidents that we've offered up.

6 Q Okay. And are you familiar with the term life
7 care plan, Dr. Reagles?

8 A Yes, I am.

9 Q What is that, please?

10 A Well, life care plan is a term that is used by
11 individuals in the medical profession and in my profession to
12 essentially designate an array of services that comprise the
13 anticipated future health care of an individual. It includes
14 such things as periodic visits to the doctor, medications,
15 therapies, surgeries, that sort of thing, and if we obviously
16 have someone who is a severely disabled individual, spinal
17 cord injury, traumatic brain injury, a life care plan can be
18 very extensive. So that's what I was asked to do in the
19 instance of Penny Collins, was to determine the cost of the
20 anticipated future health care that she will require as a
21 result of her impairment.

22 Q And is there a generally-accepted method used
23 by members of your profession to prepare these life care
24 plans?

25 A Yes, there is.

1 Q And would you describe that method, please?

2 A Sure. Essentially what a life care planner
3 does is to first of all review the medical records,
4 especially the most contemporary medical records because
5 those are the ones that are going to be most pertinent to
6 what's going to come in the future, also to know on the basis
7 of research evidence and standards of care what services are
8 related to one another. In other words, if the person is
9 receiving a certain type of medication, there's a requirement
10 that they be seen periodically to monitor such things as the
11 blood level of that medication, make a determination of any
12 side effects, and make any changes to the medication that may
13 be warranted. And then, whether or not an individual
14 requires any kind of intervention, any kind of therapy, and
15 so that is, once that process is done, then there is
16 essentially a rough draft of the life care plan that is
17 formulated.

18 It is then used as a basis of communication
19 between the life care planner and the treating physicians or
20 allied health professionals such as psychologist or social
21 worker, occupational therapist, physical therapist and so on.
22 And through that process, then the life care plan becomes
23 firmer, it's always recognized that life care plan can change
24 going forward, but it's -- the one that we will present, the
25 one that I will present today is our best estimate of what's

1 going to happen in the future. Circumstances change, we
2 recognize that, but I can't predict what those are going to
3 be. And so what you have here is the estimate of what
4 Ms. Collins will need going forward based upon Dr. Alley's
5 recommendations. My role is to determine the cost of these
6 goods and services.

7 Q Now the method that you describe, generally,
8 did you use that method for analyzing a life care plan for
9 Ms. Collins?

10 A Yes.

11 Q And did you confer or ask Dr. Alley to review
12 this life care plan?

13 A Yes, I did ask him.

14 Q And who is Dr. Alley in relation to
15 Ms. Collins so we can follow this?

16 A He is Ms. Collins' primary care physician, he
17 is the one who has for more than a decade managed her medical
18 care, not only the symptoms, manifestations of the
19 post-traumatic stress disorder, but other medical issues as
20 well, for which any of us might go to our primary care
21 physician.

22 Q And did you include that doctor's input into
23 your formulation of a life care plan for Ms. Collins?

24 A Yes, I did.

25 Q And to be clear, Dr. Reagles, are you

1 recommending or prescribing the goods and services in this
2 plan for Ms. Collins?

3 A No, just as I'm not an actuarial scientist,
4 I'm not a physician either, okay, so again, my role is to
5 determine the cost of these goods and services. I can't
6 prescribe these goods and services, that's Dr. Alley's job.

7 Q So Dr. Reagles, do you have an opinion
8 regarding the present annual cost and the future cost of the
9 periodic evaluations consistent with the life care plan that
10 Penny Collins will require in the future?

11 A Yes, I do.

12 Q We have a chart here?

13 A That is chart number 10. And you heard me say
14 there were 11 so we're getting close.

15 Q Dr. Reagles, I'm putting before you what's
16 been marked as Plaintiff's P81J and would you explain your
17 opinion, please.

18 A Yes, let's take a look at, this is a typical
19 life care, typical elements of a life care plan. They begin
20 with what's called periodic evaluations, evaluations to,
21 essentially to monitor the individual's condition, make any
22 changes to the treatment plan that may be warranted on the
23 basis of that evaluation, may order diagnostic tests, that
24 sort of thing. So here we have a psychiatric evaluation to
25 assess the nature and severity of Ms. Collins' emotional

1 response to her disablement, in this instance post-traumatic
2 stress disorder, and to evaluate the potential utility of
3 personal counseling and psychopharmacological intervention
4 such as antidepressants and others.

5 Now why a psychiatric evaluation? Well, that
6 is the standard of care for individuals who are using
7 substances such as lorazepam which is a benzodiazepine, it is
8 a -- essentially a sedative to, for anxiety symptoms, as well
9 as Ambien, which is a -- what's called a hypnotic which is --
10 essentially induces sleep, or promotes sleep. So when
11 individuals have these kinds of medications, the standard of
12 care is that they be seen four times a year to monitor those
13 medications, make any changes in the regimen, prescribe any
14 new medications that might come on the market, that sort of
15 thing. The cost of such an evaluation is \$113. Four of them
16 would be \$452. And over the course of her lifetime -- and
17 incidentally, her life expectancy is 32.1 years. So 450 --
18 \$452, going forward, for 32.1 years, appreciated at the
19 estimated increase for such services of slightly more than
20 4 percent is \$24,185. And the present value of that is
21 \$10,690. So you can see, you can see essentially the power
22 of compound interest. If you invested this \$10,690 today, it
23 would yield over the course of these 32.1 years an estimated
24 \$24,185.

25 The medications, the lorazepam which is a

1 relatively inexpensive medication, over the course of her
2 lifetime would be \$1,359, the present value of that is \$587.
3 The Ambien is more expensive, you see slightly less than \$200
4 a month or \$2,265 a year. The future cost of that is
5 \$123,873. But the present value of that is \$57,802.

6 And then the last element of the life care
7 plan is personal adjustment counseling, the recommended by
8 Dr. Alley, she has had some but he's recommending more, and
9 education, estimated that on the average she will have six to
10 eight counseling sessions per year. Some years she may have
11 none, some years she may have more, estimated at about seven
12 per year. So 7 times 129 gives us \$903. The future cost of
13 that is \$48,398, the present value of which is \$21,100, and
14 so the subtotal here of these two elements is \$79,489. And
15 the sum of the present values is \$90,179. So here's --
16 here's the number that's important right here. This is the
17 present value of the anticipated future cost of these three
18 elements of the life care plan.

19 Q Now Dr. Reagles, do you have an opinion
20 regarding the present annual cost and the future cost of the
21 therapeutic modalities that Penny Collins will require in the
22 future?

23 A Just gave it to you.

24 Q That was contained in 10, all right. Very
25 good then. Now, you've given a lot here, lot of numbers, lot

1 of opinion. And did I ask you to prepare a summary of this,
2 a chart that summarizes your opinions regarding the economic
3 losses resulting from Penny Collins' disablement?

4 A Yes.

5 Q And do you have that chart here?

6 A Yes, I do. That's the chart number 11, the
7 last one.

8 Q I have to mark this one. Dr. Reagles, I'm
9 putting before you what's been marked as Plaintiff's
10 Exhibit P81K. And I'd ask you to explain your summary,
11 please.

12 A Sure. As you can see, these are blanks but if
13 you recall my testimony that her past loss of earnings
14 capacity was estimated at \$285,255, and the loss of
15 retirement contributions for that period of time was \$24,259.
16 And so the subtotal of the past losses was calculated to be
17 \$309,514. Now the future losses, again we're going to be
18 talking about present values here, because that's where
19 present values relate to estimated loss sums going into the
20 future. And we have -- notice that we're going to have a
21 range, and once again, why is there a range? Because one
22 assumption is that she would have continued to work as a
23 corrections officer, the second assumption was that she would
24 have been promoted to a sergeant and so that's where we're
25 going to have some differences here.

1 Net loss of future earnings capacity, that is
2 what she might have earned as a corrections officer or as a
3 corrections sergeant less the amount of money that she's
4 capable of working as, for example, a marriage and family
5 counselor, was \$514,256, and if she'd become a sergeant, that
6 amount goes up to \$633,940. The net loss of retirement
7 benefits, \$41,140, assuming that she continued to work as a
8 corrections officer; slightly more, \$50,715 if she had been
9 promoted to a sergeant. The loss of terminal benefits,
10 \$4,842, versus \$5,505 had she been promoted to a sergeant.
11 And then the future health-related goods and services is not
12 a range, it's only one value, and that was \$90,179. And so
13 the subtotal of these is \$650,417, up to \$780,339. So this
14 is the future, this is the past, so if I add this to these
15 two numbers, it's going to give me the total, \$959,931. Or
16 if she'd been promoted to a sergeant, \$1,089,853.

17 Q Thank you, Dr. Reagles.

18 A Thank you.

19 Q Now, did you prepare a report other than in
20 chart form of your -- what you were requested to do and your
21 opinions?

22 A Yes, I did.

23 THE COURT: Counsel, could you please take
24 down the last chart so we can see.

25 MS. CONNOR: Sorry.

1 THE COURT: I just want everybody to see the
2 witness.

3 MS. CONNOR: No, I'm sorry.

4 Q Dr. Reagles, I'm showing you what's been
5 marked as Plaintiff's Exhibit 81, and would you look at that,
6 review it and identify it for me if you can.

7 A Yes, this is a copy of my report including
8 three appendices.

9 MS. CONNOR: At this time, your Honor,
10 plaintiff offers Plaintiff's Exhibit 81.

11 THE COURT: Could you identify the three
12 appendices before you make your offer, please, so we know
13 what they are.

14 Q Would you identify those, please, Dr. Reagles.

15 A Appendix A is a list of the provider vendor
16 service description and cost basis of each of the three
17 elements of the life care plan. The appendix B is a list of
18 documents reviewed and the references that I used in
19 preparing my report. So there are -- I'm sorry, there are
20 only two appendices, A and B. A has three tabs.

21 MS. CONNOR: Okay. At this time, your Honor,
22 we offer Plaintiff's Exhibit 81.

23 THE COURT: Any objection?

24 MS. SHEEHAN: I'd like to see the document for
25 a minute.

1 THE COURT: Was it provided to you, Counsel?

2 MS. SHEEHAN: The one I have, I have a copy
3 that's not signed, I'd like to make sure this one is signed,
4 certification.

5 THE COURT: Okay.

6 A Is that one signed?

7 Q Dr. Reagles, I would ask you to sign this.
8 Sign this, please, and will you also make sure I put the
9 appendix back correctly. I think I did.

10 A Where is that binder when we need it?

11 Q It's full is what it is. Okay. Thank you
12 very much.

13 A This is fine, it's in order.

14 THE COURT: Mr. Andrews, are you going to
15 avail yourself of the opportunity to look at that document as
16 well?

17 MR. ANDREWS: I'm just rising, your Honor.

18 THE COURT: Okay.

19 MS. SHEEHAN: No objections, your Honor.

20 MR. ANDREWS: No objections, your Honor.

21 THE COURT: This document will be received.

22 Q And Dr. Reagles, did you prepare what's known
23 as a curriculum vitae?

24 A Well, I do, not specifically for this
25 appearance, it's just prepared in the standard course of

1 business, yes.

2 Q What is a curriculum vitae?

3 A Essentially a curriculum vitae is a record of
4 scholarly accomplishments, degrees, positions held, the names
5 and titles of publications, offices held in professional
6 associations, that sort of thing.

7 Q I'm going to place before you what's been
8 marked as Plaintiff's Exhibit 76 and I would ask if you could
9 review that and identify it for me if you can.

10 A Yes, this is actually an older one, this is
11 back in January of 2008, there is one December 2011 that's
12 more contemporaneous. If you wish, I could bring that
13 tomorrow.

14 Q Okay, then I'll hold and not offer that --

15 A Okay.

16 Q -- at this time.

17 A Actually I think I have one in my briefcase.

18 Q Oh, okay.

19 THE COURT: I am glad to hear you're
20 anticipating being here tomorrow. That's good.

21 THE WITNESS: I figured that was coming.

22 MS. CONNOR: Other than --

23 THE WITNESS: As long as it's just for the
24 morning.

25 THE COURT: We'll see.

1 MS. CONNOR: Your Honor, other than the offer
2 of the updated curriculum vitae of Dr. Reagles, I have
3 nothing further for this witness at this time.

4 THE COURT: Thank you, Ms. Connor. We will
5 get the updated one and we'll have you offer it first thing
6 tomorrow morning, okay. We're going to stop here, ladies and
7 gentlemen. I think maybe sufficient numbers are dancing in
8 your head like sugarplums on Christmas. So we're going to
9 stop and give everybody an opportunity to have a nice restful
10 night. Dr. Reagles, we'll appreciate you being here tomorrow
11 morning.

12 THE WITNESS: By all means.

13 THE COURT: We're going to try to get started
14 at 9:00 sharp, we'll do our best to do that. Going to keep
15 these lawyers after you go home so we can try and clear up
16 any issues before we have to be here tomorrow morning, get
17 started so that hopefully that will ensure a prompt and
18 timely start. Please don't talk about it, if anybody
19 approaches you, tries to talk about it, I need to know about
20 it immediately. Any media, anything like that, please
21 disregard, do not listen, change the channel, change the
22 station, do not read anything that may be printed anywhere,
23 okay. And we'll see you tomorrow morning, have a nice night.

24 (Jury Excused, 4:32 p.m.)

25 THE COURT: Okay, Dr. Reagles, you may step

1 down, sir, thank you.

2 (Whereupon the witness was excused.)

3 THE COURT: Okay. Some housekeeping.

4 Ms. Connor, when Dr. Reagles' testimony is complete, you're
5 going to be down to three, potentially two witnesses,
6 depending on what kind of luck the marshals had in finding
7 Ms. Mayville.

8 THE CLERK: She wasn't there. No one's home,
9 no vehicles in the driveway, no neighbors were around.

10 THE COURT: Okay. So that doesn't sound
11 promising. We'll have them continue to check later this
12 evening and maybe she's just away for the day, but we'll do
13 what we can for you, but if they don't find her, they don't
14 find her, okay.

15 MS. CONNOR: Yes.

16 THE COURT: So your other two witnesses should
17 be prepared to testify as soon as Dr. Reagles' testimony is
18 completed.

19 MS. CONNOR: Yes, thank you.

20 THE COURT: Okay. Now, with regard to issues
21 with the remaining witnesses, we have Jami Kaplan from
22 Division of Human Rights, and Dr. John Alley. There was an
23 application made by defense counsel with regard to Jami
24 Kaplan's testimony, and rendering an opinion or giving
25 testimony regarding an EEOC determination as a part of her

1 testimony. And it's the court's intention to allow
2 Ms. Kaplan to testify fully about her investigation, but that
3 I'm not going to allow her to testify with regard to any
4 determination that was made by her or her office with regard
5 to probable cause for essentially what would be this lawsuit
6 going forward. The court finds that's a jurisdictional
7 requirement, and I do believe that she has relevant testimony
8 with regard to what she did with regard to her investigation,
9 but I think that any determination or decision made by that
10 office invades the province of this jury. It's up to them to
11 decide whether or not there is cause to believe that any type
12 of sexual discrimination or harassment occurred.

13 Now I recognize that probable cause
14 determination, and a fact finding of harassment or sexual
15 discrimination are two different things, but I think that
16 it's close enough and there's case law to support the fact
17 that it's within the court's discretion to make this
18 determination, and based on what I've heard to this point, I
19 think it's appropriate that she only be allowed to testify
20 about her investigation and not about any determination she
21 may have made. Okay. Anything further on that? Ms. Connor?

22 MS. CONNOR: No, your Honor.

23 THE COURT: From the defense?

24 MS. SHEEHAN: No, your Honor.

25 THE COURT: Ms. Sheehan, no, Mr. Andrews?

1 MR. ANDREWS: I did have a brief issue with
2 regard to her testimony but not with regard to the probable
3 cause determination.

4 THE COURT: What is that issue, sir?

5 MR. ANDREWS: Included in interview notes are
6 notes of a discussion with the deceased witness Ms. Carter.
7 It's hearsay anyway so I'm not sure, you know, that it would
8 come in in any event but I didn't want to wait and have to
9 slow down the proceeding in order to object to there being
10 any discussion of that conversation.

11 THE COURT: Ms. Connor.

12 MS. CONNOR: Your Honor, her investigation
13 consisted of many interviews with employees or former
14 employees of the Department of Corrections, and she has
15 interview notes which I was not planning on introducing as
16 hearsay, that was not part of the plan. So I don't believe
17 that counsel would have any problem with the nature of the
18 testimony I would seek to elicit from her with respect to Sue
19 Carter.

20 MR. ANDREWS: I certainly accept that
21 representation, your Honor.

22 THE COURT: And you're certainly free to
23 object at any point during the time of her testimony. Now,
24 with regard to --

25 MS. SHEEHAN: Your Honor, may I interrupt you

1 a second. Regarding Ms. Kaplan's testimony, can we also make
2 sure she is advised that she can't comment on the racial and
3 religious -- racial and religious derogatory comments that
4 were made?

5 THE COURT: Yeah, that's already been -- I've
6 already ruled on that.

7 MS. CONNOR: I fully intended to advise her of
8 that, your Honor.

9 THE COURT: Very well, thank you. Anything
10 further with regard to Ms. Kaplan?

11 MS. SHEEHAN: No, your Honor.

12 MR. ANDREWS: No, your Honor.

13 THE COURT: And I just want to complete the
14 record with regard to my ruling on Ms. Carter and the request
15 by plaintiff to have certain portions regarding Sergeant
16 Mitchell read, and I'm referring to pages 101 of Ms. Carter's
17 deposition, over into 102 where there were questions
18 regarding -- to Ms. Carter regarding Ms. Collins, and I'm
19 going to read from the transcript. It says, "Other than what
20 Ms. Collins has told you, do you have any direct personal
21 knowledge of any interaction that she had with then Sergeant
22 Mitchell, the defendant in this action?"

23 And her answer was, "It happened on a
24 different shift.

25 "Question: Were you ever present when

1 Ms. Collins interacted with then Sergeant Mitchell?

2 "Answer: Not present when she interacted with
3 him, no.

4 "Question: So you didn't see or hear anything
5 that transpired between the two, did you?

6 "Answer: No, sir.

7 "In other words -- Question: In other
8 words -- I'll rephrase it. Other than Ms. Collins, what
9 Ms. Collins told you, do you know anything that transpired
10 between her and Sergeant Mitchell?

11 "No."

12 And again, the only other parts of this
13 record, of this deposition that have been read in by defense
14 counsel strongly suggests that the interaction that
15 Ms. Carter had with Sergeant Mitchell that she was able to
16 testify about occurred prior to a time that Ms. Collins was
17 working at Auburn Correctional Facility. That was the basis
18 of my ruling, I want to make sure it was clear for the
19 record.

20 Now, are there any issues with regard to
21 Dr. Alley that we need to address? Ms. Connor, from your
22 perspective?

23 MS. CONNOR: May I have one moment, please.

24 THE COURT: Yes.

25 (Pause in Proceedings.)

1 MS. CONNOR: Your Honor, to my knowledge we've
2 already addressed the issues and I don't think there are any
3 more. I don't want to rehash the ones we've addressed,
4 please, but I believe that covers it from my perspective.

5 THE COURT: Okay, defense counsel, Dr. Alley?

6 MR. KINSEY: No, we have no issues with him.

7 THE COURT: Okay. Mr. Andrews?

8 MR. ANDREWS: No issues, your Honor.

9 THE COURT: Now the next issue. And we're
10 going to need to get this accomplished tonight so that we can
11 finish with Dr. Reagles' testimony in the morning. That is
12 Dr. Reagles' binder, and what's contained therein. I'm going
13 to ask counsel to stay here for a bit so that we can review
14 this binder with plaintiff's counsel and defense counsel here
15 so that if there's anything in the binder that defense
16 counsel does not have, copies can be made so they can take it
17 with them tonight and prepare for cross-examination tomorrow
18 morning. So we're going to accomplish that now, I'm going to
19 ask that counsel start that process.

20 There was a question of whether or not medical
21 records were provided to the defense. Counsel Connor has
22 represented that those items were turned over. The court's
23 familiar that this case has been transferred from some
24 assistant, one Assistant Attorney General or maybe more, I
25 don't know how many before it gets to counsel so I'm going to

1 ask that there be a review of discovery materials that were
2 provided, and make sure that anything that Dr. Reagles
3 indicated that he relied upon to -- as a basis to form his
4 opinion be provided to defense counsel, be provided again,
5 today, before they leave here tonight. Okay. So that's part
6 of this review, to make sure if those records aren't in the
7 doctor's binder, that they're provided. Anything further?
8 And I'm going stay here until this is completed so it's
9 available, all right?

10 MS. CONNOR: Your Honor, my understanding that
11 Dr. Reagles is gone and I believe he took his binder with
12 him. My assistant has -- my assistant has my phone right
13 now, she's calling him on his cell phone to ask him to
14 immediately turn around and return.

15 THE COURT: Yeah, we need that binder.

16 MS. CONNOR: I understand. I was unaware of
17 that, I'm sorry, your Honor.

18 THE COURT: Okay.

19 MS. SHEEHAN: Your Honor.

20 THE COURT: Yes.

21 MS. SHEEHAN: Another issue. We were work --
22 where do we stand with Exhibit 6 and the employee's manual?
23 There was an issue regarding whether we produced it, is it in
24 evidence?

25 THE COURT: No, I reserved.

1 MS. CONNOR: It's reserved.

2 THE COURT: With regard to 6.

3 MS. SHEEHAN: We can probably clear that up
4 now.

5 THE COURT: Let's address it. What's your
6 position with regard to Plaintiff's Exhibit 6? Were you able
7 to catch him?

8 MS. CONNOR: Yes, he's still in the building
9 and my assistant's asked him to stop and wait, she's going
10 down to retrieve it.

11 THE COURT: Good, because we can get the
12 guards to chase after him.

13 MS. CONNOR: I'm sorry, your Honor, I didn't
14 quite hear your question.

15 THE COURT: We're going to address Plaintiff's
16 Exhibit 6. Ms. Sheehan has indicated that, and I think she's
17 right, we should clear that up now, she says they think
18 they're prepared to get it cleared up.

19 MS. SHEEHAN: We do not object to Exhibit 6
20 being admitted as long as it is redacted in the same way
21 Exhibit 2 is. Exhibit 2 is redacted for security reasons.
22 There's sections that relate to security of the gate, inmate
23 security, and as long as Exhibit 6 is redacted the same way,
24 we will not object to its admission.

25 THE COURT: Ms. Connor?

1 MS. CONNOR: That's agreeable, your Honor.

2 THE COURT: Well, then Plaintiff's Exhibit 6
3 will be received into evidence with the redactions as noted
4 being made, okay. And Counsel, it's another task I'm going
5 to ask you to complete tonight before you leave so that it's
6 done, and we have a redacted copy that can be put into
7 evidence. Anything else? Okay. I would indicate that your
8 clients and everyone else can leave and I'll expect counsel
9 to be here working diligently until we get these tasks
10 completed and I'm going to stay here, so I expect to hear
11 from you as to any issues or problems, we'll have our court
12 reporter available here for a few minutes, in case we need to
13 put anything on the record. Okay. Thank you.

14 THE CLERK: Court's in recess.

15 (Whereupon a recess was taken from
16 4:45 p.m. to 4:52 p.m.)

17 (Open Court, Jury Out, 4:52 p.m.)

18 THE COURT: Counsel, Counsel, if I could get
19 everybody's attention, I do want to cover one more thing
20 while you're working there, or interrupt your work. And
21 that's the issue of closing the courtroom for the
22 stipulation, with regard to the sexual assault, and then
23 examinations thereafter. Case law is pretty clear that
24 closing the courtroom should be done as a last resort, and if
25 I do, it's a fact-finding matter where I need to have facts

1 on the record sufficient for me to find that there's reasons
2 or sufficient cause to close the courtroom and exclude the
3 public from these proceedings. And I'm going to ask
4 Ms. Connor to make that application, which is why I'm telling
5 you now, of the sensitive nature of the information, and a
6 request as to why you want the courtroom closed and give me
7 as much of a factual basis for the record to consider that.
8 Okay. I'll tell you now that any closing that I would order
9 would be a limited closing, in other words, it wouldn't be
10 for an entire witness' testimony, you would have to indicate
11 to me, counsel on both sides, point in time when you are
12 going to get into the subject matter that's of concern, and,
13 you know, I would close the courtroom for that limited period
14 of examination, and then have it reopened.

15 I'm telling you this now, because I want you
16 to be prepared to make your application, and from what I
17 heard earlier today, I don't think there will be any
18 objection from defense counsel representing any of the
19 parties on the defendants' side, which makes the burden a
20 little less. There being no objection registered with the
21 court, you know, I can't -- I can imagine that maybe we can
22 do a limited closing provided there's sufficient facts laid
23 out on the record.

24 The other issue is when the application is
25 made, because it seems silly to make that application in open

1 court because then the issue you're concerned about and the
2 sensitive nature of it would be out there for the public. So
3 I want you to anticipate when you want to make this
4 application, and we want to do it at a time where it's
5 convenient to stop the proceedings and close the court,
6 courtroom, or I can have you come to the bench and make the
7 application at the bench with all counsel present, okay, and
8 if you want your clients to be present for the application,
9 we can have them come to the bench, but it would seem to me
10 easier if we can pick a point in time, either at the very
11 beginning of proceedings where I can have the courtroom
12 closed for just a few minutes while we handle that matter,
13 but I can do it either way. Okay. Any requests, comments
14 with regard to that?

15 MR. ANDREWS: No, your Honor.

16 MS. SHEEHAN: Not at this time, your Honor.

17 MS. CONNOR: No.

18 THE COURT: Okay. And I'm right in
19 anticipating that defense counsel is going to -- how many
20 witnesses do you anticipate that you'll be cross-examining or
21 asking questions about that particular subject matter?
22 Sexual assault of the plaintiff.

23 MS. SHEEHAN: Two.

24 THE COURT: Two. Dr. Alley.

25 MS. SHEEHAN: And possibly Dr. Reagles.

1 THE COURT: And what about your doctor?

2 MS. SHEEHAN: Yes, but you asked all cross, he
3 would be direct.

4 THE COURT: Yeah, okay, part of any
5 examination. Your doctor as well. You don't anticipate any
6 cross-examination of Dr. Reagles in this area?

7 MS. SHEEHAN: Yes.

8 THE COURT: Oh, I'm sorry, I didn't hear the
9 name, you did say?

10 MS. SHEEHAN: Dr. Reagles, Dr. Alley.

11 THE COURT: It's Reagles.

12 MS. SHEEHAN: Reagles. It's my Philadelphia
13 accent.

14 THE COURT: So possibly tomorrow afternoon, or
15 tomorrow morning then.

16 MS. SHEEHAN: Possibly, yeah, it depends on
17 how long Ms. Connor's direct is.

18 MS. CONNOR: My direct should be --

19 THE COURT: She's done.

20 MS. CONNOR: -- less than one minute, it's
21 solely for the purpose of the updated CV, then I'm done.

22 THE COURT: CV, otherwise she's done.

23 MS. CONNOR: It should take about a minute.

24 THE COURT: So then you want to be prepared,
25 Ms. Connor, to make your application first thing in the

1 morning. Matter of fact let's get here a little early, let's
2 do that at 8:45 so that we're prepared for the jury right
3 afterwards. And it's easier to close the courtroom at that
4 point because there might not be as many people around.
5 Okay. Is that agreeable to everybody?

6 MR. ANDREWS: Yes, your Honor.

7 MS. SHEEHAN: Yes, your Honor.

8 MS. CONNOR: Yes.

9 THE COURT: Okay. Thank you.

10 THE CLERK: Court's in recess.

11 (Whereupon a recess was taken from 4:57 p.m.
12 to 5:20 p.m.)

13 MS. SHEEHAN: Your Honor, the good news is the
14 medical records are here.

15 THE COURT: Okay.

16 MS. SHEEHAN: And I'm this close. There's not
17 a whole lot of copying.

18 THE COURT: Ms. Connor?

19 MS. CONNOR: Yes, your Honor.

20 THE COURT: Do you want a copy or not?

21 MS. CONNOR: No, thank you. Thank you for the
22 offer, but no thank you. Had enough paper.

23 This is good news for many of us, I'm going to
24 withdraw my request to close the courtroom with respect to
25 the matters that we discussed earlier. Therefore I will not

1 be making an application tomorrow to do that.

2 THE COURT: Okay. Your client's okay with
3 that?

4 MS. CONNOR: Absolutely.

5 THE COURT: All right. Very well.

6 (Court Adjourned, 5:27 p.m.)
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C E R T I F I C A T I O N

I, JODI L. HIBBARD, RPR, CRR, CSR,
Official Court Reporter in and for the United States
District Court, Northern District of New York, DO
HEREBY CERTIFY that I attended the foregoing
proceedings, took stenographic notes of the same,
and that the foregoing is a true and correct
transcript thereof.

JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter